

## **PART II: IMPLEMENTATION OF COMMUNITY SERVICE**

### **11-II.A. OVERVIEW**

Each PHA must develop a policy for administration of the community service and economic self-sufficiency requirements for public housing. It is in the PHA's best interests to develop a viable, effective community service program, to provide residents the opportunity to engage in the community and to develop competencies.

#### **PHA Implementation of Community Service**

The PHA may not substitute any community service or self-sufficiency activities performed by residents for work ordinarily performed by PHA employees, or replace a job at any location where residents perform activities to satisfy the service requirement [24 CFR 960.609].

#### PHA Policy

The PHA will notify its insurance company if residents will be performing community service at the PHA. In addition, the PHA will ensure that the conditions under which the work is to be performed are not hazardous.

If a disabled resident certifies that they are able to perform community service, the PHA will ensure that requests for reasonable accommodation are handled in accordance with the policies in Chapter 2.

#### **PHA Program Design**

The PHA may administer qualifying community service or economic self-sufficiency activities directly, or may make community service activities available through a contractor, or through partnerships with qualified organizations, including resident organizations, and community agencies or institutions [24 CFR 960.605(b)].

#### PHA Policy

The PHA will attempt to provide the broadest choice possible to residents as they choose community service activities.

The PHA's goal is to design a service program that gives residents viable opportunities to become involved in the community and to gain competencies and skills. The PHA will work with resident organizations and community organizations to design, implement, assess and recalibrate its community service program.

The PHA will make every effort to identify volunteer opportunities throughout the community, especially those in proximity to public housing developments. To the greatest extent possible, the PHA will provide names and contacts at agencies that can provide opportunities for residents, including persons with disabilities, to fulfill their community service obligations.

Any written agreements or partnerships with contractors and/or qualified organizations, including resident organizations, are described in the PHA Plan.

The PHA will provide in-house opportunities for volunteer work or self-sufficiency programs when possible.

When the PHA has a ROSS program, a ROSS Service Coordinator, or an FSS program, the PHA will coordinate individual training and service plans (ITSPs) with the community service requirement. Regular meetings with PHA coordinators will satisfy community service activities and PHA coordinators will verify community service hours within individual monthly logs.

## EXHIBIT 11-1: COMMUNITY SERVICE AND SELF-SUFFICIENCY POLICY

### A. Background

The Quality Housing and Work Responsibility Act of 1998 requires that all nonexempt (see definitions) public housing adult residents (18 or older) contribute eight (8) hours per month of community service (volunteer work) or participate in eight (8) hours of training, counseling, classes or other activities that help an individual toward self-sufficiency and economic independence. This is a requirement of the public housing lease.

### B. Definitions

**Community Service** – community service activities include, but are not limited to, work at:

- Local public or nonprofit institutions such as schools, head start programs, before or after school programs, childcare centers, hospitals, clinics, hospices, nursing homes, recreation centers, senior centers, adult day care programs, homeless shelters, feeding programs, food banks (distributing either donated or commodity foods), or clothes closets (distributing donated clothing)
- Nonprofit organizations serving PHA residents or their children such as: Boy or Girl Scouts, Boys or Girls Club, 4-H clubs, Police Assistance League (PAL), organized children's recreation, mentoring or education programs, Big Brothers or Big Sisters, garden centers, community clean-up programs, beautification programs
- Programs funded under the Older Americans Act, such as Green Thumb, Service Corps of Retired Executives, senior meals programs, senior centers, Meals on Wheels
- Public or nonprofit organizations dedicated to seniors, youth, children, residents, citizens, special-needs populations or with missions to enhance the environment, historic resources, cultural identities, neighborhoods, or performing arts
- PHA housing to improve grounds or provide gardens (so long as such work does not alter the PHA's insurance coverage); or work through resident organizations to help other residents with problems, including serving on the Resident Advisory Board
- Care for the children of other residents so parent may volunteer

**Note:** Political activity is excluded.

**Self-Sufficiency Activities** – self-sufficiency activities include, but are not limited to:

- Job readiness or job training
- Training programs through local one-stop career centers, workforce investment boards (local entities administered through the U.S. Department of Labor), or other training providers
- Employment counseling, work placement, or basic skills training
- Education, including higher education (junior college or college), or reading, financial, or computer literacy classes
- Apprenticeships (formal or informal)
- English proficiency or English as a second language classes
- Budgeting and credit counseling
- Any other program necessary to ready a participant to work (such as substance abuse or mental health counseling)

**Exempt Adult** – an adult member of the family who meets any of the following criteria:

- Is 62 years of age or older
  - Is blind or a person with disabilities (as defined under section 216[i][1] or 1614 of the Social Security Act), and who certifies that because of this disability they are unable to comply with the service provisions, or is the primary caretaker of such an individual
  - Is engaged in *work activities*
  - Is able to meet requirements under a state program funded under part A of title IV of the Social Security Act, or under any other welfare program of the state in which the PHA is located, including a state-administered welfare-to-work program; or
  - Is a member of a family receiving assistance, benefits, or services under a state program funded under part A of title IV of the Social Security Act, or under any other welfare program of the state in which the PHA is located, including a state-administered welfare-to-work program and the supplemental nutrition assistance program (SNAP), and has not been found by the state or other administering entity to be in noncompliance with such program
  - Is a member of a non-public housing over-income family.
- PHAs can use reasonable guidelines in clarifying the work activities in coordination with TANF, as appropriate.

**Work Activities** – as it relates to an exemption from the community service requirement, *work activities* means:

- Unsubsidized employment
- Subsidized private sector employment
- Subsidized public sector employment
- Work experience (including work associated with the refurbishing of publicly assisted housing) if sufficient private sector employment is not available
- On-the-job training
- Job search and job readiness assistance
- Community service programs
- Vocational educational training (not to exceed 12 months with respect to any individual)
- Job skills training directly related to employment
- Education directly related to employment, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency
- Satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate
- Provision of childcare services to an individual who is participating in a community service program

### **C. Requirements of the Program**

1. The eight (8) hours per month may be either volunteer work or self-sufficiency program activity, or a combination of the two.
2. At least eight (8) hours of activity must be performed each month, or may be aggregated across a year. Any blocking of hours is acceptable as long as long as 96 hours is completed by each annual certification of compliance.
3. Family obligation:
  - At lease execution, all adult members (18 or older) of a public housing resident family must:
    - Sign a certification (Attachment A) that they have received and read this policy and understand that if they are not exempt, failure to comply with the community service requirement will result in a nonrenewal of their lease; and
    - Declare if they are exempt. If exempt, they must complete the Exemption Form (Exhibit 11-3) and provide documentation of the exemption.
  - Upon written notice from the PHA, nonexempt family members must present complete documentation of activities performed during the applicable lease term. This documentation will include places for signatures of supervisors, instructors, or

counselors, certifying the number of hours.

- If a family member is found to be noncompliant at the end of the 12-month lease term, they, and the head of household, will be required to sign an agreement with the housing authority to make up the deficient hours over the next twelve (12) month period, or the lease will be terminated.
  - At annual reexamination, the family must also sign a certification certifying that they understand the community service requirement.
4. Change in exempt status:
- If, during the twelve (12) month lease period, a nonexempt person becomes exempt, it is their responsibility to report this to the PHA and provide documentation of exempt status.
  - If, during the twelve (12) month lease period, an exempt person becomes nonexempt, it is their responsibility to report this to the PHA. Upon receipt of this information the PHA will provide the person with the appropriate documentation form(s) and a list of agencies in the community that provide volunteer and/or training opportunities.

#### **D. Authority Obligation**

1. To the greatest extent possible and practicable, the PHA will:
  - Provide names and contacts at agencies that can provide opportunities for residents, including residents with disabilities, to fulfill their community service obligations.
  - Provide in-house opportunities for volunteer work or self-sufficiency activities.
2. The PHA will provide the family with a copy of this policy, and all applicable exemption verification forms and community service documentation forms, at lease-up, lease renewal, when a family member becomes subject to the community service requirement during the lease term, and at any time upon the family's request.
3. Although exempt family members will be required to submit documentation to support their exemption, the PHA will verify the exemption status in accordance with its verification policies. The PHA will make the final determination as to whether or not a family member is exempt from the community service requirement. Residents may use the PHA's grievance procedure if they disagree with the PHA's determination.
4. Noncompliance of family member:
  - At least thirty (30) days prior to the end of the 12-month lease term, the PHA will begin reviewing the exempt or nonexempt status and compliance of family members;
  - If, at the end of the initial 12-month lease term under which a family member is subject to the community service requirement, the PHA finds the family member to be noncompliant, the PHA will not renew the lease unless:
    - The head of household and any other noncompliant resident enter into a written agreement with the PHA, to make up the deficient hours over the next twelve (12) month period; or

- The family provides written documentation satisfactory to the PHA that the noncompliant family member no longer resides in the unit.
- If, at the end of the next 12-month lease term, the family member is still not compliant, a 30-day notice to terminate the lease will be issued and the entire family will have to vacate, unless the family provides written documentation satisfactory to the PHA that the noncompliant family member no longer resides in the unit;
- The family may use the PHA's grievance procedure to dispute the lease termination.

All adult family members must sign and date below, certifying that they have read and received a copy of this Community Service and Self-Sufficiency Policy.

Resident	Date
Resident	Date
Resident	Date
Resident	Date

**EXHIBIT 11-2: DEFINITION OF A PERSON WITH A DISABILITY UNDER SOCIAL SECURITY ACTS 216(i)(1) and Section 1416(excerpt) FOR PURPOSES OF EXEMPTION FROM COMMUNITY SERVICE**

**Social Security Act:**

**216(i)(1):** Except for purposes of sections 202(d), 202(e), 202(f), 223, and 225, the term “disability” means (A) inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months, or (B) blindness; and the term “blindness” means central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered for purposes of this paragraph as having a central visual acuity of 20/200 or less.

**Section 1416 (excerpt):**

SEC. 1614. *[42 U.S.C. 1382c]* (a)(1) For purposes of this title, the term “aged, blind, or disabled individual” means an individual who—

- (A) is 65 years of age or older, is blind (as determined under paragraph (2)), or is disabled (as determined under paragraph (3)), and
- (B)(i) is a resident of the United States, and is either (I) a citizen or (II) an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law (including any alien who is lawfully present in the United States as a result of the application of the provisions of section 212(d)(5) of the Immigration and Nationality Act), or
- (ii) is a child who is a citizen of the United States and, who is living with a parent of the child who is a member of the Armed Forces of the United States assigned to permanent duty ashore outside the United States.
- (2) An individual shall be considered to be blind for purposes of this title if he has central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered for purposes of the first sentence of this subsection as having a central visual acuity of 20/200 or less. An individual shall also be considered to be blind for purposes of this title if he is blind as defined under a State plan approved under title X or XVI as in effect for October 1972 and received aid under such plan (on the basis of blindness) for December 1973, so long as he is continuously blind as so defined.
- (3)(A) Except as provided in subparagraph (C), an individual shall be considered to be disabled for purposes of this title if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months.



**EXHIBIT 11-3: PHA DETERMINATION OF EXEMPTION FOR COMMUNITY SERVICE**

Family: \_\_\_\_\_

Adult family member: \_\_\_\_\_

This adult family member meets the requirements for being exempted from the PHA's community service requirement for the following reason:

- ☐ 62 years of age or older (*Documentation of age in file*)
- ☐ Is a person with disabilities and self-certifies below that they are unable to comply with the community service requirement (*Documentation of HUD definition of disability in file*)

**Tenant certification:** I am a person with disabilities and am unable to comply with the community service requirement.

Signature of Family Member	Date
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- ☐ Is the primary caretaker of such an individual in the above category (*Documentation in file*)
- ☐ Is engaged in work activities (*Verification in file*)
- ☐ Is able to meet requirements under a state program funded under part A of title IV of the Social Security Act, or under any other welfare program of the state in which the PHA is located, including a state-administered welfare-to-work program (*Documentation in file*)
- ☐ Is a member of a family receiving assistance, benefits, or services under a state program funded under part A of title IV of the Social Security Act, or under any other welfare program of the state in which the PHA is located, including a state-administered welfare-to-work program and the supplemental nutrition assistance program (SNAP), and has not been found by the state or other administering entity to be in noncompliance with such program (*Documentation in file*)

Signature of Family Member	Date
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Signature of PHA Official	Date
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**EXHIBIT 11-4: CSSR WORK-OUT AGREEMENT**

Date: \_\_\_\_\_

Noncompliant Adult: \_\_\_\_\_

Adult family member: \_\_\_\_\_

**Community Service & Self-Sufficiency Requirement (CSSR):**

Under Section 12 of the U.S. Housing Act, the \_\_\_\_\_ (insert name of PHA) is required to enforce the community service and self-sufficiency requirement (CSSR). Under the CSSR, each nonexempt adult family member residing in public housing must perform 8 hours per month of community service or self sufficiency activities.

**Noncompliance:** \_\_\_\_\_ (insert name of PHA) has found that the nonexempt individual named above is in noncompliance with the CSSR. This work-out agreement is the PHA's written notification to you of this noncompliance.

Our records show that for the most recent lease term you were required to perform \_\_\_\_\_ hours of CSSR activities. However, there were \_\_\_\_\_ hours of verified CSSR activities. Therefore, you are in noncompliance for \_\_\_\_\_ hours.

\_\_\_\_\_ (insert name of PHA) will not renew the lease at the end of the current 12-month lease term unless the head of household and noncompliant adult sign a written work-out agreement with \_\_\_\_\_ (insert name of PHA) or the family provides written assurance that is satisfactory to \_\_\_\_\_ (insert name of PHA) explaining that the noncompliant adult no longer resides in the unit. The regulations require that the work-out agreement include the means through which a noncompliant family member will comply with the CSSR requirement. [24 CFR 960.607(c), Notice PIH 2015-12]. The terms of the CSSR work-out agreement are on the reverse side of this page.

**Enforcement:** Should a family member refuse to sign this CSSR work-out agreement, or fail to comply with the terms of this CSSR work-out agreement, or fail to provide satisfactory written assurance that the noncompliant adult no longer resides in the unit, \_\_\_\_\_ (insert name of PHA) is required to initiate termination of tenancy proceedings at the end of the current 12-month lease [24 CFR 966.53(c)].

Terms of CSSR Work-Out Agreement

Noncompliant Adult: \_\_\_\_\_

**Please check one of the below boxes:**

- ☐ I [head of household or spouse/cohead] certify that the noncompliant adult named above no longer resides in the unit. [Verification attached.]
- ☐ I, the noncompliant adult named above, agree to complete \_\_\_\_\_ hours in the upcoming 12-month lease term. These hours include the \_\_\_\_\_ hours not fulfilled in the most previous lease term, plus the 96 hours for the upcoming lease term.

Below is a description of means through which I will comply with the CSSR requirement:

Description of Activity	Number of Hours
1.	
2.	
3.	
4.	
5.	
Total Hours	

**SIGNED AND ATTESTED THIS DATE**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Head of Household

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Noncompliant Adult, if other than Head of Household

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
PHA Official

## Chapter 12

### TRANSFER POLICY

#### INTRODUCTION

This chapter explains the PHA's transfer policy, based on HUD regulations, HUD guidance, and PHA policy decisions.

This chapter describes HUD regulations and PHA policies related to transfers in four parts:

Part I: Emergency Transfers. This part describes emergency transfers, emergency transfer procedures, and payment of transfer costs.

Part II: PHA Required Transfers. This part describes types of transfers that may be required by the PHA, notice requirements, and payment of transfer costs.

Part III: Transfers Requested by Residents. This part describes types of transfers that may be requested by residents, eligibility requirements, security deposits, payment of transfer costs, and handling of transfer requests.

Part IV: Transfer Processing. This part describes creating a waiting list, prioritizing transfer requests, the unit offer policy, examples of good cause, deconcentration, transferring to another development and reexamination.

The PHA may require the tenant to move from the unit under some circumstances. There are also emergency circumstances under which alternate accommodations for the tenant must be provided, that may or may not require a transfer.

The tenant may also request a transfer, such as a request for a new unit as a reasonable accommodation.

The PHA must have specific policies in place to deal with acceptable transfer requests.

## **PART I: EMERGENCY TRANSFERS**

### **12-1.A. OVERVIEW**

HUD categorizes certain situations that require emergency transfers [PH Occ GB, p. 147]. The emergency transfer differs from a typical transfer in that it requires immediate action by the PHA.

In the case of a genuine emergency, it may be unlikely that the PHA will have the time or resources to immediately transfer a tenant. Due to the immediate need to vacate the unit, placing the tenant on a transfer waiting list would not be appropriate. Under such circumstances, if an appropriate unit is not immediately available, the PHA should find alternate accommodations for the tenant until the emergency passes, or a permanent solution, i.e., return to the unit or transfer to another unit, is possible.

## 12.1.B. EMERGENCY TRANSFERS

If the dwelling unit is damaged to the extent that conditions are created which are hazardous to life, health, or safety of the occupants, the PHA must offer standard alternative accommodations, if available, where necessary repairs cannot be made within a reasonable time [24 CFR 966.4(h)].

VAWA requires the PHA to adopt an emergency transfer plan for victims of domestic violence, dating violence, sexual assault, stalking, or human trafficking.

### PHA Policy

The following are considered emergency circumstance warranting an immediate transfer of the tenant or family:

Maintenance conditions in the resident's unit, building or at the site that pose an immediate, verifiable threat to the life, health, or safety of the resident or family members that cannot be repaired or abated within 24 hours. Examples of such unit or building conditions would include: a gas leak, no heat in the building during the winter, no water, toxic contamination, and serious water leaks.

A verified incident of domestic violence, dating violence, sexual assault, stalking, or human trafficking. For instances of domestic violence, dating violence, sexual assault, stalking, or human trafficking, the threat may be established through documentation outlined in section 16-VII.D. To request the emergency transfer, the requestor must submit an emergency transfer request form (HUD-5383) (Exhibit 16-4 of this ACOP), although, the PHA may waive this requirement in order to expedite the transfer process.

The PHA will immediately process requests for transfers due to domestic violence, dating violence, sexual assault, stalking, or human trafficking once a full request is received and absent of any conflicting information. The PHA will allow a tenant to make an internal emergency transfer under VAWA when a safe unit is immediately available, as applicable and without disclosing the victim's location. The PHA defines *immediately available* as a vacant unit, that is ready for move-in within a reasonable period of time, not to exceed 60 days. If an internal transfer to a safe unit is not immediately available, the PHA will assist the resident in seeking an external emergency transfer either within or outside the PHA's programs.

The PHA has adopted an emergency transfer plan, which is included as Exhibit 16-3 to this plan.

## **12-1.C. EMERGENCY TRANSFER PROCEDURES**

### **PHA Policy**

Any condition that would produce an emergency work order would qualify a family for an emergency transfer if the repairs cannot be made within 24 hours.

If the transfer is necessary because of maintenance conditions, and an appropriate unit is not immediately available, the PHA will provide temporary accommodations to the tenant by arranging for temporary lodging at a hotel or similar location. The family is entitled to alternative accommodations even if the tenant, household member, guest, or other covered person is responsible for the damage that caused the hazard or if a family is in the process of being evicted.

If the conditions that required the transfer cannot be repaired, or the condition cannot be repaired in a reasonable amount of time, the PHA will transfer the resident to the first available and appropriate unit after the temporary relocation.

Emergency transfers that arise due to maintenance conditions are mandatory for the tenant.

If the emergency transfer is necessary to protect a victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking, the PHA will follow procedures outlined in Exhibit 16-4.

## **12-1.D. COSTS OF TRANSFER**

### **PHA Policy**

The PHA will bear the reasonable costs of temporarily accommodating the tenant and of long-term transfers, if any, due to emergency conditions.

The reasonable cost of transfers includes the cost of packing, moving, and unloading.

The PHA will establish a moving allowance based on the typical costs in the community of packing, moving, and unloading. To establish typical costs, the PHA will collect information from companies in the community that provide these services.

The PHA will reimburse the family for eligible out-of-pocket moving expenses up to the PHA's established moving allowance.





## **PART II: PHA-REQUIRED TRANSFERS**

### **12-II.A. OVERVIEW**

HUD regulations regarding transfers are minimal, leaving it up to the PHA to develop reasonable transfer policies.

The PHA may require that a resident transfer to another unit under some circumstances. For example, the PHA may require a resident to transfer to make an accessible unit available to a disabled family. The PHA may also transfer a resident to maintain occupancy standards based on family composition. Finally, a PHA may transfer residents to demolish or renovate the unit.

A transfer that is required by the PHA is an adverse action and is subject to the notice requirements for adverse actions [24 CFR 966.4(e)(8)(i)].

### **12-II.B. TYPES OF PHA-REQUIRED TRANSFERS**

#### **PHA Policy**

The types of transfers that may be required by the PHA, include, but are not limited to, transfers to make an accessible unit available for a disabled family, transfers to comply with occupancy standards, transfers for demolition, disposition, revitalization, or rehabilitation, and emergency transfers as discussed in Part I of this chapter.

Transfers required by the PHA are mandatory for the tenant. The family will be given 30 days to vacate the unit after receipt of written notice.

#### **Transfers to Make an Accessible Unit Available**

When a family is initially given an accessible unit, but does not require the accessible features, the PHA may require the family to agree to move to a non-accessible unit when it becomes available [24 CFR 8.27(b)].

#### **PHA Policy**

When a non-accessible unit becomes available, the PHA will transfer a family living in an accessible unit that does not require the accessible features, to an available unit that is not accessible. The PHA may wait until a disabled resident requires the accessible unit before transferring the family that does not require the accessible features out of the accessible unit.

## Occupancy Standards Transfers

The PHA may require a resident to move when a reexamination indicates that there has been a change in family composition, and the family is either overcrowded or over-housed according to PHA policy [24 CFR 960.257(a)(4)]. On some occasions, the PHA may initially place a resident in an inappropriately sized unit at lease-up, where the family is over-housed, to prevent vacancies. The public housing lease must include the tenant's agreement to transfer to an appropriately sized unit based on family composition [24 CFR 966.4(c)(3)].

### PHA Policy

The PHA will transfer a family when the family size has changed and the family is now too large (overcrowded) or too small (over-housed) for the unit occupied.

For purposes of the transfer policy, overcrowded and over-housed are defined as follows:

*Overcrowded:* the number of household members exceeds the maximum number of persons allowed for the unit size in which the family resides, according to the chart in Section 5-1.B.

*Over-housed:* the family no longer qualifies for the bedroom size in which they are living based on the PHA's occupancy standards as described in Section 5-1.B.

The PHA may also transfer a family who was initially placed in a unit in which the family was over-housed to a unit of an appropriate size based on the PHA's occupancy standards, when the PHA determines there is a need for the transfer.

The PHA may elect not to transfer an over-housed family in order to prevent vacancies.

A family that is required to move because of family size will be advised by the PHA that a transfer is necessary and that the family has been placed on the transfer list.

Families that request and are granted an exception to the occupancy standards (for either a larger or smaller size unit) in accordance with the policies in Section 5-1.C. will only be required to transfer if it is necessary to comply with the approved exception.

## **Demolition, Disposition, Revitalizations, or Rehabilitation, Including Rental Assistance Demonstration (RAD) Conversions Transfers**

These transfers permit the PHA to demolish, sell or do major capital or rehabilitation work at a building site [PH Occ GB, page 148].

### **PHA Policy**

The PHA will relocate a family when the unit or site in which the family lives is undergoing major rehabilitation that requires the unit to be vacant, or the unit is being disposed of or demolished. The PHA's relocation plan may or may not require transferring affected families to other available public housing units.

If the relocation plan calls for transferring public housing families to other public housing units, affected families will be placed on the transfer list.

In cases of revitalization or rehabilitation, the family may be offered a temporary relocation if allowed under Relocation Act provisions, and may be allowed to return to their unit, depending on contractual and legal obligations, once revitalization or rehabilitation is complete.

### **12-II.C. ADVERSE ACTION [24 CFR 966.4(e)(8)(i)]**

A PHA required transfer is an adverse action. As an adverse action, the transfer is subject to the requirements regarding notices of adverse actions. If the family requests a grievance hearing within the required timeframe, the PHA may not take action on the transfer until the conclusion of the grievance process.

### **12-II.D. COST OF TRANSFER**

#### **PHA Policy**

The PHA will bear the reasonable costs of transfers that the PHA requires, except that residents will be required to bear the cost of occupancy standards transfers.

The reasonable costs of transfers include the cost of packing, moving, and unloading.

The PHA will establish a moving allowance based on the typical costs in the community of packing, moving, and unloading. To establish typical costs, the PHA will collect information from companies in the community that provide these services.

The PHA will reimburse the family for eligible out-of-pocket moving expenses up to the PHA's established moving allowance.

## **PART III: TRANSFERS REQUESTED BY TENANTS**

### **12-III.A. OVERVIEW**

HUD provides the PHA with discretion to consider transfer requests from tenants. The only requests that the PHA is required to consider are requests for reasonable accommodation. All other transfer requests are at the discretion of the PHA. To avoid administrative costs and burdens, this policy limits the types of requests that will be considered by the PHA.

Some transfers that are requested by tenants should be treated as higher priorities than others due to the more urgent need for the transfer.

### **12-III.B. TYPES OF RESIDENT-REQUESTED TRANSFERS**

#### **PHA Policy**

The types of requests for transfers that the PHA will consider are limited to requests for transfers to alleviate a serious or life-threatening medical condition, transfers due to a threat of physical harm or criminal activity, reasonable accommodation, transfers to a different unit size provided that the family qualifies for the unit according to the PHA's occupancy standards, and transfers to a location closer to employment. No other transfer requests will be considered by the PHA.

The PHA will consider the following as high priority transfer requests:

When a transfer is needed to alleviate verified medical problems of a serious or life-threatening nature.

When there has been a verified threat of physical harm or criminal activity. Such circumstances may, at the PHA's discretion, include an assessment by law enforcement indicating that a family member is the actual or potential victim of a criminal attack, retaliation for testimony, or a hate crime.

When a family requests a transfer as a reasonable accommodation. Examples of a reasonable accommodation transfer include, but are not limited to, a transfer to a first-floor unit for a person with mobility impairment, or a transfer to a unit with accessible features.

The PHA will consider the following as regular priority transfer requests:

When a family requests a larger bedroom size unit even though the family does not meet the PHA's definition of overcrowded, as long as the family meets the PHA's occupancy standards for the requested size unit.

When the head of household or spouse is employed 25 miles or more from the public housing unit, has no reliable transportation, and public transportation is not adequate.

Transfers requested by the tenant are considered optional for the tenant.

### **12-III.C. ELIGIBILITY FOR TRANSFER**

Transferring residents do not have to meet the admission eligibility requirements pertaining to income or preference. However, the PHA may establish other standards for considering a transfer request [PH Occ GB, p. 150].

#### **PHA Policy**

Except where reasonable accommodation is being requested, the PHA will only consider transfer requests from residents that meet the following requirements:

- Have not engaged in criminal activity that threatens the health and safety of residents and staff
- Owe no back rent or other charges, or have a pattern of late payment
- Have no housekeeping lease violations or history of damaging property

A resident with housekeeping standards violations will not be transferred until the resident passes a follow-up housekeeping inspection.

Exceptions to the good record requirement may be made when it is to the PHA's advantage to make the transfer.

Exceptions will also be made when the PHA determines that a transfer is necessary to protect the health or safety of a resident who is a victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking, and who provides documentation of abuse in accordance with section 16-VII.D of this ACOP. In response to an emergency transfer request under such circumstances, the PHA will not evaluate whether tenant is in good standing as part of the assessment or provision of an emergency transfer. Whether or not a tenant is in good standing does not impact their ability to request an emergency transfer under VAWA.

If a family requested to be placed on the waiting list for a unit size smaller than designated by the occupancy guidelines, the family will not be eligible to transfer to a larger size unit for a period of two years from the date of admission, unless they have a change in family size or composition, or it is needed as a reasonable accommodation.

## **12-III.D. SECURITY DEPOSITS**

### **PHA Policy**

When a family transfers from one unit to another, the PHA will transfer their security deposit to the new unit. The tenant will be billed for any maintenance or others charges due for the “old” unit.

## **12-III.E. COST OF TRANSFER**

The PHA must pay moving expenses to transfer a resident with a disability to an accessible unit as an accommodation for the resident’s disability [Notice PIH 2010-26].

### **PHA Policy**

The resident will bear all the costs of transfer they request. However, the PHA will bear the transfer costs when the transfer is done as a reasonable accommodation.



## **12-III.F. HANDLING OF REQUESTS**

### **PHA Policy**

Residents requesting a transfer to another unit or development will be required to submit a written request for transfer.

In order to request the emergency transfer under VAWA, the resident will be required to submit an emergency transfer request form (HUD-5383) (Exhibit 16-4 of this ACOP). The PHA may, on a case-by-case basis, waive this requirement and accept a verbal request in order to expedite the transfer process. If the PHA accepts an individual's statement, the PHA will document acceptance of the statement in the individual's file in accordance with 16-VII.D. of this ACOP. Transfer requests under VAWA will be processed in accordance with the PHA's Emergency Transfer Plan (Exhibit 16-3). In case of a reasonable accommodation transfer, the PHA will encourage the resident to make the request in writing using a reasonable accommodation request form. However, the PHA will consider the transfer request any time the resident indicates that an accommodation is needed whether or not a formal written request is submitted.

The PHA will respond by approving the transfer and putting the family on the transfer list, by denying the transfer, or by requiring more information or documentation from the family, such as documentation of domestic violence, dating violence, sexual assault, stalking, or human trafficking in accordance with section 16-VII.D of this ACOP.

If the family does not meet the "good record" requirements under Section 12-III.C., the manager will address the problem and, until resolved, the request for transfer will be denied.

The PHA will respond within ten (10) business days of the submission of the family's request. If the PHA denies the request for transfer, the family will be informed of its grievance rights.

## **PART IV: TRANSFER PROCESSING**

### **12-IV.A. OVERVIEW**

Generally, families who request a transfer should be placed on a transfer list and processed in a consistent and appropriate order. The transfer process must be clearly auditable to ensure that residents do not experience inequitable treatment.

### **12-IV.B. TRANSFER LIST**

#### PHA Policy

The PHA will maintain a centralized transfer list to ensure that transfers are processed in the correct order and that procedures are uniform across all properties.

Emergency transfers will not automatically go on the transfer list. Instead emergency transfers will be handled immediately, on a case by case basis. If the emergency cannot be resolved by a temporary accommodation, and the resident requires a permanent transfer, the family will be placed at the top of the transfer list.

Transfers will be processed in the following order:

1. Emergency transfers (hazardous maintenance conditions, VAWA)
2. High-priority transfers (verified medical condition, threat of harm or criminal activity, and reasonable accommodation)
3. Transfers to make accessible units available
4. Demolition, renovation, etc.
5. Occupancy standards
6. Other PHA-required transfers
7. Other resident-requested transfers

Within each category, transfers will be processed in order of the date a family was placed on the transfer list, starting with the earliest date.

With the approval of the executive director, the PHA may, on a case-by-case basis, transfer a family without regard to its placement on the transfer list in order to address the immediate need of a family in crisis.

Demolition and renovation transfers will gain the highest priority as necessary to allow the PHA to meet the demolition or renovation schedule.

## **12-IV.C. TRANSFER OFFER POLICY**

### PHA Policy

Residents will receive one offer of a transfer.

When the transfer is required by the PHA, the refusal of that offer without good cause will result in lease termination.

When the transfer has been requested by the resident, the refusal of that offer without good cause will result in the removal of the family from the transfer list. In such cases, the family must wait six months to reapply for another transfer.

## **12-IV.D. GOOD CAUSE FOR UNIT REFUSAL**

### PHA Policy

Examples of good cause for refusal of a unit offer include, but are not limited to, the following:

The family demonstrates to the PHA's satisfaction that accepting the unit offer will require an adult household member to quit a job, drop out of an educational institution or job training program, or take a child out of day care or an educational program for children with disabilities.

The family demonstrates to the PHA's satisfaction that accepting the offer will place a family member's life, health, or safety in jeopardy. The family should offer specific and compelling documentation such as restraining orders, other court orders, risk assessments related to witness protection from a law enforcement agency, or documentation of domestic violence, dating violence, stalking, or human trafficking in accordance with section 16-VII.D of this ACOP. Reasons offered must be specific to the family. Refusals due to location alone do not qualify for this good cause exemption.

A health professional verifies temporary hospitalization or recovery from illness of the principal household member, other household members (as listed on final application) or live-in aide necessary to the care of the principal household member.

The unit is inappropriate for the applicant's disabilities, or the family does not need the accessible features in the unit offered and does not want to be subject to a 30-day notice to move.

The unit has lead-based paint and the family includes children under the age of six.

The PHA will require documentation of good cause for unit refusals.

## **12-IV.E. DECONCENTRATION**

### PHA Policy

If subject to deconcentration requirements, the PHA will consider its deconcentration goals when transfer units are offered. When feasible, families above the Established Income Range will be offered a unit in a development that is below the Established Income Range, and vice versa, to achieve the PHA's deconcentration goals. A deconcentration offer will be considered a "bonus" offer; that is, if a resident refuses a deconcentration offer, the resident will receive one additional transfer offer.

## **12-IV.F. REXAMINATION POLICIES FOR TRANSFERS**

### PHA Policy

The reexamination date will be changed to the first of the month in which the transfer took place.



## Chapter 13

### LEASE TERMINATIONS

#### INTRODUCTION

Either party to the dwelling lease agreement may terminate the lease in accordance with the terms of the lease. A public housing lease is different from a private dwelling lease in that the family's rental assistance is tied to their tenancy. When the family moves from their public housing unit, they lose their rental assistance. Therefore, there are additional safeguards to protect the family's tenancy in public housing.

Likewise, there are safeguards to protect HUD's interest in the public housing program. The PHA has the authority to terminate the lease because of the family's failure to comply with HUD regulations, for serious or repeated violations of the terms of the lease, and for other good cause. HUD regulations also specify when termination of the lease is mandatory by the PHA.

When determining PHA policy on terminations of the lease, the PHA must consider state and local landlord-tenant laws in the area where the PHA is located. Such laws vary from one location to another, and these variances may be either more or less restrictive than federal law or HUD regulation.

This chapter presents the policies that govern voluntary termination of the lease by the family and the mandatory and voluntary termination of the lease by the PHA. It is presented in four parts:

Part I: Termination by Tenant. This part discusses the PHA requirements for voluntary termination of the lease by the family.

Part II: Termination by PHA - Mandatory. This part describes circumstances when termination of the lease by the PHA is mandatory. This part also explains nonrenewal of the lease for noncompliance with community service requirements and families that have been over the income limit for 24 consecutive months.

Part III: Termination by PHA – Other Authorized Reasons. This part describes the PHA's options for lease termination that are not mandated by HUD regulation but for which HUD authorizes PHAs to terminate. For some of these options HUD requires the PHA to establish policies and lease provisions for termination, but termination is not mandatory. For other options the PHA has full discretion whether to consider the options as just cause to terminate provided that the PHA policies are reasonable, nondiscriminatory, and

do not violate state or local landlord-tenant law. This part also discusses the alternatives that the PHA may consider in lieu of termination, and the criteria the PHA will use when deciding what actions to take.

Part IV: Notification Requirements. This part presents the federal requirements for disclosure of criminal records to the family prior to termination, the HUD requirements and PHA policies regarding the timing and content of written notices for lease termination and eviction, and notification of the post office when eviction is due to criminal activity. This part also discusses record keeping related to lease termination.





## **PART I: TERMINATION BY TENANT**

### **13-I.A. TENANT CHOOSES TO TERMINATE THE LEASE [24 CFR 966.4(k)(1)(ii) and 24 CFR 966.4(i)(1)]**

The family may terminate the lease at any time, for any reason, by following the notification procedures as outlined in the lease. Such notice must be in writing and delivered to the property site office or the PHA central office or sent by pre-paid first-class mail, properly addressed.

#### PHA Policy

If a family desires to move and terminate their tenancy with the PHA, they must give at least 30 calendar days' advance written notice to the PHA of their intent to vacate. When a family must give less than 30 days' notice due to circumstances beyond their control the PHA, at its discretion, may waive the 30-day requirement.

The notice of lease termination must be signed by the head of household, spouse, or cohead.



## PART II: TERMINATION BY PHA – MANDATORY

### 13-II.A. OVERVIEW

HUD requires mandatory termination of the lease for certain actions or inactions of the family. There are other actions or inactions of the family that constitute *grounds* for lease termination, but the lease termination is not mandatory. The PHA must establish policies for termination of the lease in these cases where termination is optional for the PHA.

For those tenant actions or failures to act where HUD requires termination, the PHA has no such option. In those cases, the family's lease must be terminated. This part describes situations in which HUD requires the PHA to terminate the lease.

**Upon the PHA's HOTMA 102/104 compliance date, the below section on failure to provide consent is added:**

### 13-II.B. FAILURE TO PROVIDE CONSENT [24 CFR 960.259(a) and (b)]

The PHA must terminate the lease if any family member fails to sign and submit any consent form s/he is required to sign for any reexamination.

However, this does not apply if the applicant, participant, or any member of their family, revokes their consent with respect to the ability of the PHA to access financial records from financial institutions, unless the PHA establishes a policy that revocation of consent to access financial records will result in denial of admission or termination of assistance [24 CFR 5.232(c)]. PHAs may not process interim or annual reexaminations of income without the family's executed consent forms.

#### PHA Policy

The PHA has established a policy that revocation of consent to access financial records will result in termination of assistance in accordance with PHA policy.

See Chapter 7 for a complete discussion of consent requirements.

### 13-II.C. FAILURE TO DOCUMENT CITIZENSHIP [24 CFR 5.514(c) and (d) and 24 CFR 960.259(a)]

The PHA must terminate the lease if (1) a family fails to submit required documentation within the required timeframe concerning any family member's citizenship or immigration status; (2) a family submits evidence of citizenship and eligible immigration status in a timely manner, but United States Citizenship and Immigration Services (USCIS) primary and secondary verification does not verify eligible immigration status of the family, resulting in no eligible family members; or (3) a family member, as determined by the PHA, has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the unit. For (3), such termination must be for a period of at least 24 months. This does not apply to ineligible noncitizens already in the household where the family's assistance has been prorated.

See Chapter 7 for a complete discussion of documentation requirements.

### **13-II.D. FAILURE TO DISCLOSE AND DOCUMENT SOCIAL SECURITY NUMBERS [24 CFR 5.218(c), 24 CFR 960.259(a)(3), Notice PIH 2018-24]**

The PHA must terminate assistance if a participant family fails to disclose the complete and accurate social security numbers of each household member and the documentation necessary to verify each social security number.

However, if the family is otherwise eligible for continued program assistance, and the PHA determines that the family's failure to meet the SSN disclosure and documentation requirements was due to circumstances that could not have been foreseen and were outside of the family's control, the PHA may defer the family's termination and provide the opportunity to comply with the requirement within a period not to exceed 90 calendar days from the date the PHA determined the family to be noncompliant.

#### **PHA Policy**

The PHA will defer the family's termination and provide the family with the opportunity to comply with the requirement for a period of 90 calendar days for circumstances beyond the participant's control such as delayed processing of the SSN application by the SSA, natural disaster, fire, death in the family, or other emergency, if there is a reasonable likelihood that the participant will be able to disclose an SSN by the deadline.

See Chapter 7 for a complete discussion of documentation and certification requirements.

### **13-II.E. FAILURE TO ACCEPT THE PHA'S OFFER OF A LEASE REVISION [24 CFR 966.4(l)(2)(ii)(E)]**

The PHA must terminate the lease if the family fails to accept the PHA's offer of a lease revision to an existing lease, provided the PHA has done the following:

- The revision is on a form adopted by the PHA in accordance with 24 CFR 966.3 pertaining to requirements for notice to tenants and resident organizations and their opportunity to present comments.
- The PHA has made written notice of the offer of the revision at least 60 calendar days before the lease revision is scheduled to take effect.
- The PHA has specified in the offer a reasonable time limit within that period for acceptance by the family.

See Chapter 8 for information pertaining to PHA policies for offering lease revisions.

### **13-II.F. METHAMPHETAMINE CONVICTION [24 CFR 966.4(i)(5)(i)(A)]**

The PHA must immediately terminate the lease if the PHA determines that any household member has ever been convicted of the manufacture or production of methamphetamine on the premises of federally assisted housing.

See Part 13-III.B. below for the HUD definition of *premises*.

### **13-II.G. LIFETIME REGISTERED SEX OFFENDERS [Notice PIH 2012-28]**

Should a PHA discover that a member of an assisted household was subject to a lifetime registration requirement at admission and was erroneously admitted after June 25, 2001, the PHA must immediately terminate assistance for the household member.

In this situation, the PHA must offer the family the opportunity to remove the ineligible family member from the household. If the family is unwilling to remove that individual from the household, the PHA must terminate assistance for the household.

### **13-II.H. NONCOMPLIANCE WITH COMMUNITY SERVICE REQUIREMENTS [24 CFR 966.4(i)(2)(ii)(D), 24 CFR 960.603(b) and 24 CFR 960.607(b)(2)(ii) and (c)]**

The PHA is prohibited from renewing the lease at the end of the 12-month lease term when the family fails to comply with the community service requirements as described in Chapter 11.

### **13-III. DEATH OF A SOLE FAMILY MEMBER [Notice PIH 2012-4]**

The PHA must immediately terminate the lease following the death of the sole family member.

**13-II.J. OVER-INCOME FAMILIES [24 CFR 960.507; FR Notice 7/26/18;  
Notice PIH 2023-03; FR Notice 2/14/23]**

In the public housing program, an *over-income family* is defined as a family whose annual income exceeds the over-income limit for 24 consecutive months. When this occurs, the PHA must either:

- Terminate the family's tenancy within six months of the PHA's final notification of the end of the 24-month grace period; or
- Within 60 days of the PHA's final notification of the end of the 24-month grace period or the next lease renewal (whichever is sooner), have the family execute a new lease that is consistent with 24 CFR 960.509 and charge the family a monthly rent that is the higher of the applicable fair market rent (FMR) or the amount of monthly subsidy for the unit, including amounts from the operating and capital funds.

**PHA Policy**

For families whose income exceeds the over-income limit for 24 consecutive months, the PHA will not terminate the family's tenancy and will charge the family the alternative non-public housing rent, as well as require the family to sign a new non-public housing lease in accordance with the continued occupancy policies below.

All PHAs, regardless of size, must implement over-income policies. However, if a PHA owns or operates fewer than 250 public housing units and admits families whose annual income exceeds the low-income limit because there are no income-eligible families on the PHA's waiting list in accordance with 24 CFR 960.503, the over-income limit regulation does not apply to tenant families [24 CFR 950.503]. This regulation is unrelated to HOTMA 103 [24 CFR 960.507]. This is because these families are considered unassisted tenants are not participants in the public housing program.

### **Over-Income Limit [Notice PIH 2023-03; HOTMA 103 FAQs, December 2024]**

The PHA must publish over-income limits in their ACOP and update them no later than 60 days after HUD publishes new income limits each year. The over-income limit is calculated by multiplying the very low-income limit (VLI) by 2.4, as adjusted for family size. When determining whether a family is over-income, the PHA must use the applicable income limit for the current number of family members, not including any household members. Further, the over-income limit is based on the family's annual income, rather than their adjusted income.

#### **PHA Policy**

The PHA will rely on the following over-income limits. These numbers will be updated within 60 days of HUD publishing new income limits each year and will be effective for all annual and interim reexaminations once these policies have been adopted.

<b>Family Size</b>	<b>VLI Income Limit</b>	<b>Over-Income Limit</b>
1	\$47,400	\$113,760
2	\$54,150	\$129,960
3	\$60,900	\$146,160
4	\$67,650	\$162,360
5	\$73,100	\$175,440
6	\$78,500	\$188,400
7	\$83,900	\$201,360
8	\$89,300	\$214,320

For families larger than eight persons, the over-income limit will be calculated by multiplying the applicable very low-income limit by 2.4.

#### **Decreases in Income [24 CFR 960.507(c)(4)]**

If, at any time during the consecutive 24-month period following the initial over-income determination, the PHA determines that the family's income is below the over-income limit, the PHA's over-income policies no longer apply to the family. If the PHA later determines that the family's income exceeds the over-income limit at a subsequent annual or interim reexamination, the family is entitled to a new 24 consecutive month period and new notices under this section.

#### **PHA Policy**

If, at any time during the 24-month period following the initial over-income determination, an over-income family experiences a decrease in income, the family may request an interim redetermination of rent in accordance with PHA policy in Chapter 9.

If, as a result, the previously over-income family is now below the over-income limit, the family is no longer subject to over-income provisions as of the effective date of the recertification. The PHA will notify the family in writing within 10 business days of the determination that over-income policies no longer apply to them.



**Initial Notice of Over-Income Status [24 CFR 960.507(c)(1); Notice PIH 2023-03;  
HOTMA 103 FAQs, December 2024]**

The PHA is required to provide over-income families with three notifications within 30 days of the following points: at the initial determination when a family's income first exceeds the limit, at 12 months after the family continues to exceed the limit, and at 24 months of continuously exceeding the limit. If proper notice is not given, the PHA is required to continue to allow the family to stay in the unit until all three notices have been given.

If the PHA determines the family has exceeded the over-income limit during an annual or interim reexamination, the PHA must provide written notice to the family of the over-income determination no later than 30 days after the PHA's initial over-income determination. The 24 consecutive month grace period begins on the date the PHA notifies the family (for example, the post date of the notice).

The notice must state that the family has exceeded the over-income limit and continuing to do so for a total of 24 consecutive months will result in the PHA following its continued occupancy policy for over-income families. The PHA must afford the family an opportunity for a hearing if the family disputes within a reasonable time the PHA's determination that the family has exceeded the over-income limit. However, the 24-month grace period does not restart if required notices do not include grievance rights. Exhibits 13-1 and 13-2 provide sample initial notices based on HUD's model notices.

**PHA Policy**

At annual or interim reexamination, if a family's income exceeds the applicable over-income limit, within 10 business days of the determination, the PHA will notify the family in writing of the determination. The notice will state that if the family continues to be over income for 24 consecutive months, the family will be subject to the PHA's over-income policies. The notice will state that the family may request a hearing if the family disputes the PHA's determination in accordance with PHA policies in Chapter 14. The PHA will ensure that all notices and communications are provided in a manner that is effective for persons with hearing, visual, and other impairments.

**Second Notice of Over-Income Status [24 CFR 960.507(c)(2); Notice PIH 2023-03;  
Notice PIH 2023-27]**

The PHA must conduct an income examination 12 months after the initial over-income determination, even if the family is paying flat rent, unless the PHA determined the family's income fell below the over-income limit since the initial over-income determination. This includes when the PHA makes an initial determination that a family is over income during an interim reexamination. In this case the PHA must conduct a second interim reexamination 12 months after the over-income determination, unless the family's income falls below the over-income limit during the 24-month period. See Chapter 9 for PHA policies on interims for over-income families.

If the PHA determines the family continues to exceed the over-income limit for 12 consecutive months, the PHA must provide written notification of this 12-month over-income determination no later than 30 days after the income examination. The notice must state that the family has exceeded the over-income limit for 12 consecutive months and continuing to do so for a total of 24 consecutive months will result in the PHA following its continued occupancy policy for over-income families. Additionally, if applicable under PHA policy, the notice must include an estimate (based on current data) of the alternative non-public housing rent for the family's unit. The PHA must afford the family an opportunity for a hearing if the family disputes within a reasonable time the PHA's determination that the family has exceeded the over-income limit. However, the 24-month grace period does not restart if required notices do not include grievance rights. Exhibits 13-3 and 13-4 provide sample 12-month notices based on HUD's model notices.

**PHA Policy**

If a family's income continues to exceed the applicable over-income limit after 12 consecutive months, within 10 business days of the determination, the PHA will notify the family in writing of the determination. The notice will state that if the family continues to be over income for 24 consecutive months, the family will be subject to the PHA's over-income policies. The notice will provide an estimate of the alternative non-public housing rent applicable to the family at the close of the 24 consecutive month period. The notice will also state that the family may request a hearing if the family disputes the PHA's determination in accordance with PHA policies in Chapter 14. The PHA will ensure that all notices and communications are provided in a manner that is effective for persons with hearing, visual, and other impairments.

**Final Notice of Over-Income Status [24 CFR 960.507(c)(3) and 960.509;  
Notice PIH 2023-03; Notice PIH 2023-27; HOTMA 103 FAQs, December 2024]**

Unless the PHA determined the family's income fell below the over-income limit since the second over-income determination, the PHA must conduct an income examination 24 months after the initial over-income determination, even if the family is paying flat rent. When a PHA makes an initial determination that a family is over income during an interim reexamination, the PHA must conduct an interim reexamination 12 months after the over-income determination, and then again 12 months after the second over-income determination, unless the family's income falls below the over-income limit during the 24-month period.

If the family continues to be over income based on this determination, the PHA must provide written notification of this determination no later than 30 days after the income examination. The notice must state that the family has exceeded the over-income limit for 24 consecutive months and that the PHA will follow its continued occupancy policies for over-income families. The PHA must afford the family an opportunity for a hearing if the family disputes within a reasonable time the PHA's determination that the family has exceeded the over-income limit. However, the 24-month grace period does not restart if required notices do not include grievance rights. Exhibits 13-5 and 13-6 provide sample 24-month notices based on HUD's model notices.

**PHA Policy**

If a family's income exceeds the applicable over-income limit for 24 consecutive months, the PHA will notify the family in writing of the determination within 10 business days of the date of the determination. The PHA will ensure that all notices and communications are provided in a manner that is effective for persons with hearing, visual, and other impairments. The notice will state that the family will be charged the alternative non-public housing rent in accordance with PHA continued occupancy policies and HUD regulations and provide the family's new rent amount.

The notice will also include a new non-public housing lease and inform the family that the lease must be executed by the family and the PHA no later than 60 days from the date of the notice or at the next lease renewal, whichever is sooner. The family will continue to be a public housing program participant until the family executes the new non-public housing lease. The notice will also state that failure to execute the lease within this time period stated in the notice will result in termination of tenancy no more than six months after the date of the notice. The PHA will permit an over-income family to execute a lease beyond this time period, but before termination of tenancy, if the over-income family pays the PHA the total difference between the alternative non-public housing rent and their public housing rent dating back to the point in time that the over-income family was required to execute the new lease.

Once the family signs the new non-public housing lease, the family will no longer be a public housing participant family. The family will no longer be subject to income examinations, are precluded from participating in the resident council, and cannot participate in any programs that are only for public housing or low-income families. The PHA will not provide such families with hearing or grievance rights. Units occupied by NPHOI families continue to be part of the public housing inventory and are required to be inspected in the same way as units occupied by families in the public housing program. Further, NPHOI families are still required to abide by the PHA's smoke-free policies as well as the PHA's pet rules. NPHOI families are not entitled to VAWA protections as prescribed in HUD regulations but may be entitled to protections under state and local law.

The non-public housing over-income (NPHOI) lease will contain all required provisions listed at 24 CFR 960.509. The initial term of the lease will be for one year. Upon expiration of the initial lease term, the lease will not renew automatically, and subsequent leases will state renewal terms. At any time, the PHA may terminate tenancy in accordance with 24 CFR 960.509(b)(1) and in accordance with state and local law.

Upon execution of the lease, the tenant will be required to pay the amount of monthly tenant rent (known as the alternative non-public housing rent) determined by the PHA in accordance with HUD regulations. The PHA will comply with state and local law in giving the tenant written notice stating any changes in the amount of tenant rent. Charges assessed under the lease will be due in accordance with state and local law.

NPHOI families will not receive a utility allowance. The family will be responsible for their utilities where utilities are individually metered. Where utilities are not individually metered, the NPHOI family will be charged an allocation of the total energy plus any surcharges with no utility allowance.

If an NPHOI family subsequently experiences a decrease in income after signing the NPHOI lease, the family may only be readmitted to the public housing program if they once again become an eligible low-income family and reapply to the public housing program. The family will continue to pay the alternative rent until they are readmitted to public housing.

## **PART III: TERMINATION BY PHA – OTHER AUTHORIZED REASONS**

### **13-III.A. OVERVIEW**

Besides requiring PHAs to terminate the lease under the circumstances described in Part II, HUD requires the PHA to establish provisions in the lease for termination pertaining to certain criminal activity, alcohol abuse, and certain household obligations stated in the regulations. While these provisions for lease termination must be in the lease agreement, HUD does not require PHAs to terminate for such violations in all cases. The PHA has the discretion to consider circumstances surrounding the violation or, in applicable situations, whether the offending household member has entered or completed rehabilitation, and the PHA may, as an alternative to termination, require the exclusion of the culpable household member. The PHA must adopt policies concerning the use of these options.

In addition, HUD authorizes PHAs to terminate the lease for other grounds, but for only those grounds that constitute serious or repeated violations of material terms of the lease or for other good cause. The PHA must develop policies pertaining to what constitutes serious or repeated lease violations, and other good cause, based upon the content of the PHA lease. In the development of the terms of the lease, the PHA must consider the limitations imposed by state and local landlord-tenant law, as well as HUD regulations and federal statutes. Because of variations in state and local landlord-tenant law, and because HUD affords PHAs wide discretion in some areas, a broad range of policies could be acceptable.

The PHA also has the option to terminate the tenancies of certain over-income families (See 13-II.J).

The PHA may consider alternatives to termination and must establish policies describing the criteria the PHA will use when deciding what action to take, the types of evidence that will be acceptable, and the steps the PHA must take when terminating a family's lease.

### **13-III.B. MANDATORY LEASE PROVISIONS [24 CFR 966.40(5)]**

This section addresses provisions for lease termination that must be included in the lease agreement according to HUD regulations. Although the provisions are required, HUD does not require PHAs to terminate for such violations in all cases, therefore PHA policies are needed.

#### ***Definitions [24 CFR 5.100]***

The following definitions will be used for this and other parts of this chapter:

*Affiliated individual* is defined in section 16-VII.B.

*Covered person* means a tenant, any member of the tenant's household, a guest, or another person under the tenant's control.

*Dating violence* is defined in section 16-VII.B.

*Domestic violence* is defined in section 16-VII.B.

*Drug* means a controlled substance as defined in section 102 of the Controlled Substances Act [21 U.S.C. 802].

*Drug-related criminal activity* means the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with the intent to manufacture, sell, distribute, or use the drug.

*Guest* means a person temporarily staying in the unit with the consent of a tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant.

*Household* means the family and PHA-approved live-in aide. The term household also includes foster children and/or foster adults that have been approved to reside in the unit [HUD-50058, Instruction Booklet, p. 65].

*Other person under the tenant's control* means that the person, although not staying as a guest in the unit, is, or was at the time of the activity in question, on the premises because of an invitation from the tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant. Absent evidence to the contrary, a person temporarily and infrequently on the premises solely for legitimate commercial purposes is not *under the tenant's control*.

*Premises* means the building or complex or development in which the public or assisted housing dwelling unit is located, including common areas and grounds.

*Sexual assault* is defined in section 16-VII.B.

*Stalking* is defined in section 16-VII.B.

*Violent criminal activity* means any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage.

#### **Drug Crime On or Off the Premises [24 CFR 966.40(5)(i)(B)]**

The lease must provide that drug-related criminal activity engaged in on or off the premises by the tenant, member of the tenant's household or guest, or any such activity engaged in on the premises by any other person under the tenant's control is grounds for termination.

#### PHA Policy

The PHA will terminate the lease for drug-related criminal activity engaged in on or off the premises by any tenant, member of the tenant's household or guest, and any such activity engaged in on the premises by any other person under the tenant's control.

The PHA will consider all credible evidence, including but not limited to, any record of arrests or convictions of covered persons related to the drug-related criminal activity.

A record or records of arrest will not be used as the sole basis for the termination or proof that the participant engaged in disqualifying criminal activity.

In making its decision to terminate the lease, the PHA will consider alternatives as described in Section 13-III.D and other factors as described in Sections 13-III.E and 13-III.F. Upon consideration of such alternatives and factors, the PHA may, on a case-by-case basis, choose not to terminate the lease.

#### **Illegal Use of a Drug [24 CFR 966.40(5)(i)(B)]**

The lease must provide that a PHA may evict a family when the PHA determines that a household member is illegally using a drug or that a pattern of illegal use of a drug interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

#### PHA Policy

The PHA will terminate the lease when the PHA determines that a household member is illegally using a drug or the PHA determines that a pattern of illegal use of a drug interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

A pattern of illegal drug use means more than one incident of any use of illegal drugs during the previous three months.

The PHA will consider all credible evidence, including but not limited to, any record of arrests or convictions of household members related to the use of illegal drugs.

A record or records of arrest will not be used as the sole basis for the termination or proof that the participant engaged in disqualifying criminal activity.

In making its decision to terminate the lease, the PHA will consider alternatives as described in Section 13-III.D and other factors as described in Sections 13-III.E and 13-III.F. Upon consideration of such alternatives and factors, the PHA may, on a case-by-case basis, choose not to terminate the lease.

#### **Threat to Other Residents [24 CFR 966.40(5)(ii)(A)]**

The lease must provide that any criminal activity by a covered person that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (including PHA

management staff residing on the premises) or by persons residing in the immediate vicinity of the premises is grounds for termination of tenancy.

#### PHA Policy

The PHA will terminate the lease when a covered person engages in any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (including PHA management staff residing on the premises) or by persons residing in the immediate vicinity of the premises.

*Immediate vicinity* means within a three-block radius of the premises.

The PHA will consider all credible evidence, including but not limited to, any record of arrests or convictions of covered persons related to the criminal activity.

A record or records of arrest will not be used as the sole basis for the termination or proof that the participant engaged in disqualifying criminal activity.

In making its decision to terminate the lease, the PHA will consider alternatives as described in Section 13-III.D and other factors as described in Sections 13-III.E and 13-III.F. Upon consideration of such alternatives and factors, the PHA may, on a case-by-case basis, choose not to terminate the lease.

#### **Alcohol Abuse [24 CFR 966.4(l)(5)(vi)(A)]**

PHAs must establish standards that allow termination of tenancy if the PHA determines that a household member has engaged in abuse or pattern of abuse of alcohol that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

#### PHA Policy

The PHA will terminate the lease if the PHA determines that a household member has engaged in abuse or a pattern of abuse of alcohol that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

A pattern of such alcohol abuse means more than one incident of any such abuse of alcohol during the previous three months.

The PHA will consider all credible evidence, including but not limited to, any record of arrests or convictions of household members related to the abuse of alcohol.

A record or records of arrest will not be used as the sole basis for the termination or proof that the participant engaged in disqualifying criminal activity.

In making its decision to terminate the lease, the PHA will consider alternatives as described in Section 13-III.D and other factors as described in Sections 13-III.E and 13-III.F. Upon consideration of such alternatives and factors, the PHA may, on a case-by-case basis, choose not to terminate the lease.

#### **Furnishing False or Misleading Information Concerning Illegal Drug Use or Alcohol Abuse or Rehabilitation [24 CFR 966.4(l)(5)(vi)(B)]**



PHAs must establish standards that allow termination of tenancy if the PHA determines that a household member has furnished false or misleading information concerning illegal drug use, alcohol abuse, or rehabilitation of illegal drug users or alcohol abusers.

#### PHA Policy

The PHA will terminate the lease if the PHA determines that a household member has furnished false or misleading information concerning illegal drug use, alcohol abuse, or rehabilitation of illegal drug users or alcohol abusers.

The PHA will consider all credible evidence, including but not limited to, any record of arrests or convictions of household members related to the use of illegal drugs or the abuse of alcohol, and any records or other documentation (or lack of records or documentation) supporting claims of rehabilitation of illegal drug users or alcohol abusers.

In making its decision to terminate the lease, the PHA will consider alternatives as described in Section 13-III.D and other factors as described in Sections 13-III.E and 13-III.F. Upon consideration of such alternatives and factors, the PHA may, on a case-by-case basis, choose not to terminate the lease.

**Other Serious or Repeated Violations of Material Terms of the Lease – Mandatory Lease Provisions [24 CFR 966.4(l)(2)(i) and 24 CFR 966.4(f)]**

HUD regulations require certain tenant obligations to be incorporated into the lease. Violations of such regulatory obligations are considered serious or repeated violations of the lease and grounds for termination. Incidents of actual or threatened domestic violence, dating violence, sexual assault, stalking, or human trafficking may not be construed as serious or repeated violations of the lease by the victim or threatened victim [24 CFR 5.2005(c)(1)].

**PHA Policy**

The PHA will terminate the lease for the following violations of tenant obligations under the lease:

Failure to make payments due under the lease, including nonpayment of rent (see Chapter 8 for details pertaining to lease requirements for payments due);

Repeated late payment of charges due under the lease, including nonpayment of rent. Four late payments within a 12-month period shall constitute a repeated late payment.

Failure to fulfill the following household obligations:

Not to assign the lease or to sublease the dwelling unit. Subleasing includes receiving payment to cover rent and utility costs by a person living in the unit who is not listed as a family member.

Not to provide accommodations for boarders or lodgers

To use the dwelling unit solely as a private dwelling for the tenant and the tenant's household as identified in the lease, and not to use or permit its use for any other purpose

To abide by necessary and reasonable regulations promulgated by the PHA for the benefit and well-being of the housing project and the tenants which shall be posted in the project office and incorporated by reference in the lease

To comply with all obligations imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety

To keep the dwelling unit and such other areas as may be assigned to the tenant for the tenant's exclusive use in a clean and safe condition

To dispose of all ashes, garbage, rubbish, and other waste from the dwelling unit in a sanitary and safe manner

To use only in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appurtenances including elevators

To refrain from, and to cause the household and guests to refrain from destroying, defacing, damaging, or removing any part of the dwelling unit or project

To pay reasonable charges (other than for normal wear and tear) for the repair of damages to the dwelling unit, or to the project (including damages to project buildings, facilities or common areas) caused by the tenant, a member of the household or a guest

To act, and cause household members or guests to act, in a manner which will not disturb other residents' peaceful enjoyment of their accommodations and will be conducive to maintaining the project in a decent, safe and sanitary condition

In making its decision to terminate the lease, the PHA will consider alternatives as described in Section 13-III.D and other factors as described in Sections 13-III.E and 13-III.F. Upon consideration of such alternatives and factors, the PHA may, on a case-by-case basis, choose not to terminate the lease.

### **13-III.C. OTHER AUTHORIZED REASONS FOR TERMINATION [24 CFR 966.4(l)(2) and (5)(ii)(B)]**

HUD authorizes PHAs to terminate the lease for reasons other than those described in the previous sections. These reasons are referred to as “other good cause.”

#### **Other Good Cause [24 CFR 966.4(l)(2)(ii)(B) and (C)]**

HUD regulations state that the PHA may terminate tenancy for other good cause. The regulations provide a few examples of other good cause, but do not limit the PHA to only those examples. The Violence against Women Act prohibits PHAs from considering incidents of actual or threatened domestic violence, dating violence, sexual assault, stalking, or human trafficking as “other good cause” for terminating the assistance, tenancy, or occupancy rights of the victim or threatened victim of such violence [see 24 CFR 5.2005(c)(1)].

#### PHA Policy

The PHA will terminate the lease for the following reasons.

*Fugitive Felon or Parole Violator.* If a tenant is fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual flees, or that, in the case of the State of New Jersey, is a high misdemeanor; or violating a condition of probation or parole imposed under federal or state law.

*Persons subject to sex offender registration requirement.* If any member of the household has, during their current public housing tenancy, become subject to a registration requirement under a state sex offender registration program.

Discovery of facts after admission to the program that would have made the tenant ineligible.

Discovery of material false statements or fraud by the tenant in connection with an application for assistance or with a reexamination of income.

Failure to furnish such information and certifications regarding family composition and income as may be necessary for the PHA to make determinations with respect to rent, eligibility, and the appropriateness of the dwelling unit size.

Failure to transfer to an appropriate size dwelling unit based on family composition, upon appropriate notice by the PHA that such a dwelling unit is available.

Failure to permit access to the unit by the PHA after proper advance notification for the purpose of performing routine inspections and maintenance, for making improvements or repairs, or to show the dwelling unit for re-leasing, or without advance notice if there is reasonable cause to believe that an emergency exists.

Failure to promptly inform the PHA of the birth, adoption or court-awarded custody of a child. In such a case, promptly means within 10 business days of the event.

Failure to abide by the provisions of the PHA pet policy.

If the family has breached the terms of a repayment agreement entered into with the PHA.

If a family member has violated federal, state, or local law that imposes obligations in connection with the occupancy or use of the premises.

All firearms/weapons in the lawful possession of a resident, members of the resident's household, and/or resident guest/visitor must be in accordance with federal, state, and local laws. The unlawful possession of firearms/weapons by a resident, members of the resident's household and/or resident guest/visitor is prohibited and constitutes a material lease violation.

If a household member has engaged in or threatened violent or abusive behavior toward PHA personnel.

*Abusive or violent behavior towards PHA personnel* includes verbal as well as physical abuse or violence. Use of racial epithets, or other language, written or oral, that is customarily used to intimidate may be considered abusive or violent behavior.

*Threatening* refers to oral or written threats or physical gestures that communicate intent to abuse or commit violence.

In making its decision to terminate the lease, the PHA will consider alternatives as described in Section 13-III.D and other factors described in Sections 13-III.E and 13-III.F. Upon consideration of such alternatives and factors, the PHA may, on a case-by-case basis, choose not to terminate the lease.

#### ***Family Absence from Unit [24 CFR 982.551(i)]***

It is reasonable that the family may be absent from the public housing unit for brief periods. However, the PHA needs a policy on how long the family may be absent from the unit. Absence in this context means that no member of the family is residing in the unit.

#### **PHA Policy**

The family must supply any information or certification requested by the PHA to verify that the family is living in the unit, or relating to family absence from the unit, including

any PHA-requested information or certification on the purposes of family absences. The family must cooperate with the PHA for this purpose.

The family must promptly notify the PHA when all family members will be absent from the unit for an extended period. An extended period is defined as any period greater than 30 calendar days. In such a case promptly means within 10 business days of the start of the extended absence.

If a family is absent from the public housing unit for more than 180 consecutive days, and the family does not adequately verify that they are living in the unit, the PHA will terminate the lease for other good cause.

*Abandonment of the unit.* If the family appears to have vacated the unit without giving proper notice, the PHA will follow state and local landlord-tenant law pertaining to abandonment before taking possession of the unit. If necessary, the PHA will secure the unit immediately to prevent vandalism and other criminal activity.

**Upon the PHA's HOTMA 102/104 compliance date, the below section on the asset limitation is added:**

***Asset Limitation [24 CFR 5.618; Notice PIH 2023-27]***

The PHA has discretion with respect to the application of the asset limitation at annual and interim reexamination. The PHA may adopt a written policy of total nonenforcement, enforcement, or limited enforcement as well as adopting exception policies.

**PHA Policy**

The PHA has adopted a policy of total nonenforcement of the asset limitation for all program participants. The asset limitation only applies to initial eligibility determinations for new admissions to the PHA's public housing program.

**13-III.D. ALTERNATIVES TO TERMINATION OF TENANCY**

**Exclusion of Culpable Household Member [24 CFR 966.40)(5)(vii)(C)]**

As an alternative to termination of the lease for criminal activity or alcohol abuse HUD provides that the PHA may consider exclusion of the culpable household member. Such an alternative can be used for any other reason where such a solution appears viable in accordance with PHA policy.

Additionally, under the Violence against Women Act, the PHA may bifurcate a lease in order to terminate the tenancy of an individual who is a tenant or lawful occupant of a unit and engages in criminal activity directly related to domestic violence, dating violence, sexual assault, stalking, or human trafficking.

**PHA Policy**

The PHA will consider requiring the tenant to exclude a household member in order to continue to reside in the assisted unit, where that household member has participated in or been culpable for action or failure to act that warrants termination.

As a condition of the family's continued occupancy, the head of household must certify that the culpable household member has vacated the unit and will not be permitted to visit or to stay as a guest in the assisted unit. The family must present evidence of the former household member's current address upon PHA request.

**Repayment of Family Debts**

**PHA Policy**

If a family owes amounts to the PHA, as a condition of continued occupancy, the PHA will require the family to repay the full amount or to enter into a repayment agreement, within 30 days of receiving notice from the PHA of the amount owed. See Chapter 16 for policies on repayment agreements.

### 13-III.E. CRITERIA FOR DECIDING TO TERMINATE TENANCY

A PHA that has grounds to terminate a tenancy is not required to do so, except as explained in Part II of this chapter, and may consider all of the circumstances relevant to a particular case before making a decision.

#### **Evidence [24 CFR 982.553(c)]**

For criminal activity, HUD permits the PHA to terminate the lease if a *preponderance of the evidence* indicates that a household member has engaged in the activity, regardless of whether the household member has been arrested or convicted, and without satisfying the standard of proof used for a criminal conviction.

#### PHA Policy

The PHA will use the preponderance of the evidence as the standard for making all termination decisions.

*Preponderance of the evidence* is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.

Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

#### **Consideration of Circumstances [24 CFR 966.4(l)(5)(vii)(B)]**

Although it is required that certain lease provisions exist for criminal activity and alcohol abuse, HUD provides that the PHA may consider all circumstances relevant to a particular case in order to determine whether or not to terminate the lease.

Such relevant circumstances can also be considered when terminating the lease for any other reason.

#### PHA Policy

The PHA will consider the following facts and circumstances before deciding whether to terminate the lease for any of the HUD required lease provisions or for any other reasons:

The seriousness of the offending action, especially with respect to how it would affect other residents' safety or property

The extent of participation or culpability of the leaseholder, or other household members, in the offending action, including whether the culpable member is a minor, a person with disabilities, or (as discussed further in section 13-III.F) a victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking

The effects that the eviction will have on other family members who were not involved in the action or failure to act

The effect on the community of the termination, or of the PHA's failure to terminate the tenancy

The effect of the PHA's decision on the integrity of the public housing program



The demand for housing by eligible families who will adhere to lease responsibilities

The extent to which the leaseholder has shown personal responsibility and whether they have taken all reasonable steps to prevent or mitigate the offending action

The length of time since the violation occurred, including the age of the individual at the time of the conduct, as well as the family's recent history, and the likelihood of favorable conduct in the future

While a record or records of arrest will not be used as the sole basis for termination, an arrest may, however, trigger an investigation to determine whether the participant actually engaged in disqualifying criminal activity. As part of its investigation, the PHA may obtain the police report associated with the arrest and consider the reported circumstances of the arrest. The PHA may also consider:

Any statements made by witnesses or the participant not included in the police report

Whether criminal charges were filed

Whether, if filed, criminal charges were abandoned, dismissed, not prosecuted, or ultimately resulted in an acquittal

Any other evidence relevant to determining whether or not the participant engaged in disqualifying activity

Evidence of criminal conduct will be considered if it indicates a demonstrable risk to safety and/or property.

In the case of program abuse, the dollar amount of the underpaid rent and whether or not a false certification was signed by the family

### **Consideration of Rehabilitation [24 CFR 966.4(i)(5)(vii)(D)]**

HUD authorizes PHAs to take into consideration whether a household member who had used illegal drugs or abused alcohol and is no longer engaging in such use or abuse is participating in or has successfully completed a supervised drug or alcohol rehabilitation program.

#### **PHA Policy**

In determining whether to terminate the lease for illegal drug use or a pattern of illegal drug use, or for abuse or a pattern of abuse of alcohol, by a household member who is no longer engaging in such use or abuse, the PHA will consider whether such household member has successfully completed a supervised drug or alcohol rehabilitation program.

For this purpose, the PHA will require the tenant to submit evidence of the household member's successful completion of a supervised drug or alcohol rehabilitation program.

### **Reasonable Accommodation [24 CFR 966.7]**

If the family includes a person with disabilities, the PHA's decision to terminate the family's lease is subject to consideration of reasonable accommodation in accordance with 24 CFR Part 8.

#### **PHA Policy**

If a family indicates that the behavior of a family member with a disability is the reason for a proposed termination of lease, the PHA will determine whether the behavior is related to the disability. If so, upon the family's request, the PHA will determine whether alternative measures are appropriate as a reasonable accommodation. The PHA will only consider accommodations that can reasonably be expected to address the behavior that is the basis of the proposed lease termination. See Chapter 2 for a discussion of reasonable accommodation.

### **Nondiscrimination Limitation [24 CFR 966.4(i)(5)(vii)(F)]**

The PHA's eviction actions must be consistent with fair housing and equal opportunity provisions of 24 CFR 5.105.

### **13-III.F. TERMINATIONS RELATED TO DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, STALKING, OR HUMAN TRAFFICKING**

This section addresses the protections against termination of tenancy that the Violence against Women Act (VAWA) provides for public housing residents who are victims of domestic violence, dating violence, sexual assault, stalking, or human trafficking. For general VAWA requirements and PHA policies pertaining to notification, documentation, and confidentiality, see section 16-VII of this ACOP, where definitions of key VAWA terms are also located.

#### **VAWA Protections against Termination [24 CFR 5.2005(c)]**

VAWA provides that no person may deny assistance, tenancy, or occupancy rights to public housing to a tenant on the basis or as a direct result of criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking that is engaged in by a member of the household of the tenant or any guest or other person under the control of the tenant, if the tenant or affiliated individual is the victim or threatened victim of such domestic violence, dating violence, sexual assault, or stalking [FR Notice 8/6/13].

VAWA further provides that incidents of actual or threatened domestic violence, dating violence, sexual assault, or stalking may not be construed either as serious or repeated violations of the lease by the victim or threatened victim of such violence or as good cause for terminating the tenancy or occupancy rights of the victim of such violence [24 CFR 5.2005(c)(1), FR Notice 8/6/13]. Additionally, property damage and noise complaints due to abuse cannot be used as the basis for eviction [Form HUD-5380].

- Although the VAWA 2022 statute does not specifically include human trafficking in the list of victims protected under VAWA, in 2022 HUD began including human trafficking as part of the list of victims protected under VAWA (as seen in Notices PIH 2022-06, PIH 2022-22, and PIH 2022-24). In the absence of a final rule implementing VAWA 2022 and to mirror HUD's recent usage, this policy includes human trafficking in addition to domestic violence, dating violence, sexual assault, and stalking anywhere such a list appears.

PHAs and owners may not coerce, intimidate, threaten, interfere with, or retaliate against any person who exercises or assists or encourages a person to exercise any rights or protections under VAWA [FR Notice 1/4/23].

### **Limits on VAWA Protections [24 CFR 5.2005(d) and (e), FR Notice 8/6/13]**

While VAWA prohibits a PHA from using domestic violence, dating violence, sexual assault, stalking, or human trafficking as the cause for a termination or eviction action against a public housing tenant who is the victim of the abuse, the protections it provides are not absolute. Specifically:

- VAWA does not limit a PHA's otherwise available authority to terminate assistance to or evict a victim for lease violations not premised on an act of domestic violence, dating violence, sexual assault, stalking, or human trafficking providing that the PHA does not subject the victim to a more demanding standard than the standard to which it holds other tenants.

- VAWA does not limit a PHA's authority to terminate the tenancy of any public housing tenant if the PHA can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if that tenant's tenancy is not terminated.

HUD regulations define *actual and imminent threat* to mean words, gestures, actions, or other indicators of a physical threat that (a) is real, (b) would occur within an immediate time frame, and (c) could result in death or serious bodily harm [24 CFR 5.2005(d)(2) and (e)]. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include:

- The duration of the risk
- The nature and severity of the potential harm
- The likelihood that the potential harm will occur
- The length of time before the potential harm would occur [24 CFR 5.2005(e)]

In order to demonstrate an actual and imminent threat, the PHA must have objective evidence of words, gestures, actions, or other indicators. Even when a victim poses an actual and imminent threat, however, HUD regulations authorize a PHA to terminate the victim's assistance "only when there are no other actions that could be taken to reduce or eliminate the threat, including but not limited to transferring the victim to a different unit, barring the perpetrator from the property, contacting law enforcement to increase police presence or develop other plans to keep the property safe, or seeking other legal remedies to prevent the perpetrator from acting on a threat" [24 CFR 5.2005(d)(3)]. Additionally, HUD regulations state that restrictions "predicated on public safety cannot be based on stereotypes but must be tailored to particularized concerns about individual residents" [24 CFR 5.2005(d)(3)].

### PHA Policy

In determining whether a public housing tenant who is a victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking is an actual and imminent threat to other tenants or those employed at or providing service to a property, the PHA will consider the following, and any other relevant, factors:

Whether the threat is toward an employee or tenant other than the victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking

Whether the threat is a physical danger beyond a speculative threat

Whether the threat is likely to happen within an immediate time frame

Whether the threat to other tenants or employees can be eliminated in some other way, such as by helping the victim relocate to a confidential location, transferring the victim to another unit, or seeking a legal remedy to prevent the perpetrator from acting on the threat

If the tenant wishes to contest the PHA's determination that they are an actual and imminent threat to other tenants or employees, the tenant may do so as part of the grievance hearing or in a court proceeding.

### **Documentation of Abuse [24 CFR 5.2007]**

#### PHA Policy

When an individual facing termination of tenancy for reasons related to domestic violence, dating violence, sexual assault, stalking, or human trafficking claims protection under VAWA, the PHA will request in writing that the individual provide documentation supporting the claim in accordance with the policies in section 16-VII.D of this ACOP.

The PHA reserves the right to waive the documentation requirement if it determines that a statement or other corroborating evidence from the individual will suffice. In such cases the PHA will document the waiver in the individual's file.

## **Terminating or Evicting a Perpetrator of Domestic Violence**

Although VAWA provides protection from termination for victims of domestic violence, it does not provide such protection for perpetrators. In fact, VAWA gives the PHA the explicit authority to bifurcate a lease, or remove a household member from a lease, “in order to evict, remove, or terminate assistance to any individual who is a tenant or lawful occupant of the housing and who engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against an affiliated individual or other individual, without evicting, removing, terminating assistance to, or otherwise penalizing a victim of such criminal activity removing, terminating assistance to, or otherwise penalizing a victim of such criminal activity who is also a tenant or lawful occupant of the housing” [FR Notice 8/6/13]. Moreover, HUD regulations impose on the PHA the obligation to consider lease bifurcation in any circumstances involving domestic violence, dating violence, stalking, or human trafficking [see 24 CFR 966.4(e)(9)].

Specific lease language affirming the PHA’s authority to bifurcate a lease is not necessary, and the authority supersedes any local, state, or federal law to the contrary. However, if the PHA chooses to exercise its authority to bifurcate a lease, it must follow any procedures prescribed by HUD or by applicable local, state, or federal law for eviction, lease termination, or termination of assistance. This means that the PHA must follow the same rules when terminating or evicting an individual as it would when terminating or evicting an entire family [FR Notice 3/16/07]. However, perpetrators should be given no more than 30 days’ notice of termination in most cases [Notice PIH 2017-08].

### **PHA Policy**

The PHA will bifurcate a family’s lease and terminate the tenancy of a family member if the PHA determines that the family member has committed criminal acts of physical violence against other family members or others. This action will not affect the tenancy or program assistance of the remaining, nonculpable family members.

In making its decision, the PHA will consider all credible evidence, including, but not limited to, a signed certification (form HUD-5382) or other documentation of abuse submitted to the PHA by the victim in accordance with this section and section 16-VII.D. The PHA will also consider the factors in section 13.III.E. Upon such consideration, the PHA may, on a case-by-case basis, choose not to bifurcate the lease and terminate the tenancy of the culpable family member.

If the PHA does bifurcate the lease and terminate the tenancy of the culpable family member, it will do so in accordance with the lease, applicable law, and the policies in this ACOP. If the person removed from the lease was the only tenant eligible to receive assistance, the PHA must provide any remaining tenant a chance to establish eligibility for the unit. If the remaining tenant cannot do so, the PHA must provide the tenant

reasonable time to find new housing or to establish eligibility for another housing program covered under VAWA.

## **PART IV: NOTIFICATION REQUIREMENTS, EVICTION PROCEDURES AND RECORD KEEPING**

### **13-IV.A. OVERVIEW**

HUD regulations specify the requirements for the notice that must be provided prior to lease termination. This part discusses those requirements and the specific requirements that precede and follow termination for certain criminal activities which are addressed in the regulations.

This part also discusses specific requirements pertaining to the actual eviction of families and record keeping.

### **13-IV.B. CONDUCTING CRIMINAL RECORDS CHECKS [24 CFR 5.903(e)(ii) and 24 CFR 960.259]**

HUD authorizes PHAs to conduct criminal records checks on public housing residents for lease enforcement and eviction. PHA policy determines when the PHA will conduct such checks.

#### **PHA Policy**

The PHA will conduct criminal records checks when it has come to the attention of the PHA, either from local law enforcement or by other means, that an individual has engaged in the destruction of property, engaged in violent activity against another person, or has interfered with the right to peaceful enjoyment of the premises of other residents. Such checks will also include sex offender registration information. In order to obtain such information, all adult household members must sign consent forms for release of criminal conviction and sex offender registration records on an annual basis.

The PHA may not pass along to the tenant the costs of a criminal records check.



**13-IV.C. DISCLOSURE OF CRIMINAL RECORDS TO FAMILY [24 CFR 5.903(f), 24 CFR 5.905(d) and 24 CFR 966.4(i)(5)(iv)]**

In conducting criminal records checks, if the PHA uses the authority of 24 CFR 5.903 and 5.905 to obtain such information, certain protections must be afforded the tenant before any adverse action is taken. In such cases if the PHA obtains criminal records information from a state or local agency showing that a household member has been convicted of a crime, or is subject to a sex offender registration requirement, relevant to lease enforcement or eviction, the PHA must notify the household of the proposed action and must provide the subject of the record and the tenant a copy of such information, and an opportunity to dispute the accuracy and relevance of the information before an eviction or lease enforcement action is taken.

**PHA Policy**

In all cases where criminal record or sex offender registration information would result in lease enforcement or eviction, the PHA will notify the household in writing of the proposed adverse action and will provide the subject of the record and the tenant a copy of such information, and an opportunity to dispute the accuracy and relevance of the information before an eviction or lease enforcement action is taken.

The family will be given 10 business days from the date of the PHA notice, to dispute the accuracy and relevance of the information. If the family does not contact the PHA to dispute the information within that 10 business day period, the PHA will proceed with the termination action.

Should the tenant not exercise their right to dispute prior to any adverse action, the tenant still has the right to dispute in the grievance hearing or court trial.

### **13-IV.D. LEASE TERMINATION NOTICE [24 CFR 966.4(f)(3)]**

#### **Form, Delivery, and Content of the Notice**

Notices of lease termination must be in writing. The notice must state the specific grounds for termination, the date the termination will take place, the resident's right to reply to the termination notice, and their right to examine PHA documents directly relevant to the termination or eviction. If the PHA does not make the documents available for examination upon request by the tenant, the PHA may not proceed with the eviction [24 CFR 996.4(m)]. Notices of lease termination must be provided in accessible formats to ensure effective communication for individuals with disabilities, and the notice must provide meaningful access for persons with LEP.

All notices of lease termination due to a tenant's failure to pay rent must also include:

- Instructions on how the tenant can cure the nonpayment of rent violation, including:
  - An itemized amount separated by month of alleged rent owed by the tenant;
  - Any other arrearages allowed by HUD and included in the lease separated by month; and
  - The date by which the tenant must pay the amount of rent owed before an eviction for nonpayment of rent can be filed;
- Information on how the tenant may recertify their income, request a minimum rent hardship exemption, or a request to switch from flat rent to income-based rent; and
- In the event of a Presidential declaration of a national emergency, information as required by HUD.

For notices of lease termination due to a tenant's failure to pay rent, the PHA must not provide tenants with a termination notice prior to the day after the rent is due according to the lease. The PHA must not proceed with filing an eviction if the tenant pays the alleged amount of rent owed within the 30-day notification period [24 CFR 966.4(r)].

If the tenant pays the full amount of the alleged rent owed but not the arrearages, the nonpayment will still be considered cured, and an eviction for nonpayment of rent cannot be filed. However, HUD emphasizes that the protections in this rule do not apply to other types of evictions that result from non-rent lease violations, such as nonpayment of arrearages if allowed under the lease.

HUD also suggests the termination notice advise individuals of their right to request reasonable accommodations, include information on how individuals with disabilities can request a reasonable accommodation, and include a point of contact for reasonable accommodation requests.

#### PHA Policy

The notice of lease termination will include information on how the family may request a reasonable accommodation for persons with disabilities and provide contact information for the PHA's 504 coordinator.

When the PHA is required to offer the resident an opportunity for a grievance hearing, the notice must also inform the resident of their right to request a hearing in accordance with the PHA's grievance procedure. In these cases, the tenancy shall not terminate until the time for the tenant to request a grievance hearing has expired and the grievance procedure has been completed.

#### PHA Policy

When applicable, the notice will also state that the resident may request a remote hearing.

If the PHA will require that the hearing be conducted remotely, at the time the notice is sent to the resident informing them of the right to request a hearing, the resident will be notified that the hearing will be conducted remotely. The resident will be informed of the processes involved in a remote hearing and that the PHA will provide technical assistance, if needed, before the hearing.

When the PHA is not required to offer the resident an opportunity for a grievance hearing because HUD has made a due process determination and the lease termination is for criminal activity that threatens health, safety or right to peaceful enjoyment or for drug-related criminal activity, the notice of lease termination must state that the tenant is not entitled to a grievance hearing on the termination. It must specify the judicial eviction procedure to be used by the PHA for eviction of the tenant, and state that HUD has determined that the eviction procedure provides the opportunity for a hearing in court that contains the basic elements of due process as defined in HUD regulations. The notice must also state whether the eviction is for a criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other residents or employees of the PHA, or for a drug-related criminal activity on or off the premises.

#### PHA Policy

The PHA will attempt to deliver notices of lease termination directly to the tenant or an adult member of the household. If such attempt fails, the notice will be sent by first-class mail the same day.

All notices of lease termination will include a copy of the forms HUD-5382 and HUD-5380 to accompany the termination notice. Any tenant who claims that the cause for termination involves domestic violence, dating violence, sexual assault, stalking, or human trafficking of which the tenant or affiliated individual of the tenant is the victim will be given the opportunity to provide documentation in accordance with the policies in sections 13-III.F and 16-VII.D.

### **Timing of the Notice [24 CFR 966.4(1)(3)(i)]**

The PHA must give written notice of lease termination of:

- At least 30 calendar days in the case of failure to pay rent
- A reasonable period of time considering the seriousness of the situation (but not to exceed 30 calendar days)
  - If the health or safety of other residents, PHA employees, or persons residing in the immediate vicinity of the premises is threatened
  - If any member of the household has engaged in any drug-related criminal activity or violent criminal activity
  - If any member of the household has been convicted of a felony
- 30 calendar days in any other case, except that if a state or local law allows a shorter notice period, such shorter period shall apply

#### **PHA Policy**

The PHA will give written notice of 30 calendar days from the date the tenant receives the notice for nonpayment of rent, which will not be provided to tenants until the day after the day rent is due.

For all other lease terminations, the PHA will give 30 days written notice or, if state or local law allows less than 30 days, such shorter notice will be given.

The Notice to Vacate that may be required under state or local law may be combined with (run concurrently), or may run consecutive to the notice of lease termination.

#### **PHA Policy**

Any Notice to Vacate or Notice to Quit that is required by state or local law will be combined with the Notice of Lease Termination under this section.

**Notice of Nonrenewal Due to Community Service Noncompliance [24 CFR 966.40)(2)(ii)(D), 24 CFR 960.603(b) and 24 CFR 960.607(b)]**

When the PHA finds that a family is in noncompliance with the community service requirement, the tenant and any other noncompliant resident must be notified in writing of this determination. Notices of noncompliance will be issued in accordance with the requirements and policies in Section 11-I.E.

**PHA Policy**

If after receiving a notice of initial noncompliance the family does not request a grievance hearing or does not take either corrective action required by the notice within the required timeframe, a termination notice will be issued in accordance with the policies above.

If a family agreed to cure initial noncompliance by signing an agreement and is still in noncompliance after being provided the 12-month opportunity to cure, the family will be issued a notice of continued noncompliance. The notice of continued noncompliance will be sent in accordance with the policies in Section 11-I.E. and will also serve as the notice of termination of tenancy.

**Notice of Termination Based on Citizenship Status [24 CFR 5.514 (c) and (d)]**

In cases where termination of tenancy is based on citizenship status, HUD requires the notice of termination to contain additional information. In addition to advising the family of the reasons their assistance is being terminated, the notice must also advise the family of any of the following that apply: the family's eligibility for proration of assistance, the criteria and procedures for obtaining relief under the provisions for preservation of families, the family's right to request an appeal to the USCIS of the results of secondary verification of immigration status and to submit additional documentation or a written explanation in support of the appeal, and the family's right to request an informal hearing with the PHA either upon completion of the USCIS appeal or in lieu of the USCIS appeal. Please see Chapter 14 for the PHA's informal hearing procedures.

### **13-IV.E. EVICTION [24 CFR 966.4(l)(4) and 966.4(m)]**

Eviction notice means a notice to vacate, or a complaint or other initial pleading used under state or local law to commence an eviction action. The PHA may only evict the tenant from the unit by instituting a court action, unless the law of the jurisdiction permits eviction by administrative action, after a due process administrative hearing, and without a court determination of the rights and liabilities of the parties.

#### **PHA Policy**

When a family does not vacate the unit after receipt of a termination notice, by the deadline given in the notice, the PHA will follow state and local landlord-tenant law in filing an eviction action with the local court that has jurisdiction in such cases.

If the eviction action is finalized in court and the family remains in occupancy beyond the deadline to vacate given by the court, the PHA will seek the assistance of the court to remove the family from the premises as per state and local law.

The PHA may not proceed with an eviction action if the PHA has not made available the documents to be used in the case against the family and has not afforded the family the opportunity to examine and copy such documents in accordance with the provisions of 24 CFR 966.4(l)(3) and (m).

### **13-IV.F. NOTIFICATION TO POST OFFICE [24CFR 966.4(l)(5)(iii)(B)]**

When the PHA evicts an individual or family for criminal activity, including drug-related criminal activity, the PHA must notify the local post office serving the dwelling unit that the individual or family is no longer residing in the unit.

### 13-IV.G. RECORD KEEPING

For more information concerning general record keeping, see Chapter 16.

#### PHA Policy

A written record of every termination and/or eviction will be maintained by the PHA at the development where the family was residing, and will contain the following information:

Name of resident, number and identification of unit occupied

Date of the notice of lease termination and any other notices required by state or local law; these notices may be on the same form and will run concurrently

Specific reason(s) for the notices, citing the lease section or provision that was violated and other facts pertinent to the issuing of the notices described in detail (other than any criminal history reports obtained solely through the authorization provided in 24 CFR 5.903 and 5.905)

Date and method of notifying the resident

Summaries of any conferences held with the resident including dates, names of conference participants, and conclusions

## EXHIBIT 13-1: SAMPLE NOTICE FOR OVER-INCOME FAMILIES – INITIAL NOTIFICATION FOR NPHOI FAMILY OPTION<sup>1</sup>

This material is based upon work supported, in whole or in part, by Federal award number NAL-C-17-094-05 awarded to NALCAB by the U.S. Department of Housing and Urban Development. The substance and findings of the work are dedicated to the public. Neither the United States Government, nor any of its employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately-owned rights. Reference herein to any individuals, agencies, companies, products, process, services, service by trade name, trademark, manufacturer, or otherwise does not constitute or imply an endorsement, recommendation, or favoring by the author(s), contributor(s), the U.S. Government or any agency thereof. Opinions contained herein are those of the author(s) and do not necessarily reflect the official position of, or a position that is endorsed by, HUD or any Federal agency.

***These Sample Notices include provisions required per 24 CFR 960.507(c). Anything included in brackets and italic is meant as instruction to the PHA in creating its own notices. Example: [This text is meant as instruction to the PHA.]***

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<sup>1</sup> This sample notice is presented verbatim from HUD's sample forms used in the HOTMA Income and Assets Training Series, available at <https://www.hudexchange.info/resource/6849/hotma-sample-notices-for-overincome-families/>. Only the formatting has been changed to be consistent with the formatting used throughout this ACOP.



# OVER-INCOME FAMILY INITIAL NOTIFICATION

[name of PHA]

Resident name:

Address:

Date:

## Purpose

The purpose of this notice is to inform you that \_\_\_\_\_ [name of PHA] has determined that your family's income is above the income limit (over-income) according to federal rules for the public housing program. This is your **initial** (first) notice.

## What happens next?

For now, your rent will continue to be calculated as usual, you will continue to be offered a choice between income-based and flat rent, and **you do not have to move**. If your family remains over-income for the following 24 consecutive months, you will no longer be eligible for assistance under the public housing program but may remain in a public housing unit paying an alternative non-public housing rent calculated under federal rules for non-public housing tenants.

If you think that we have made a mistake and your family should not be considered over-income, you may request a hearing by calling: XXX-XXX-XXXX or emailing [address] or requesting more information from PHA staff at: [location]. If you wish to request a hearing, please do so as soon as possible. If you do not wish to request a hearing, you do not need to do anything at this time.

### **What about changes to my income?**

We will continue to reexamine your income every 12 months as usual. After each reexamination, you will receive a notification like this one if your family is still over-income.

If your family's income drops below the over-income limit before the end of the 24 consecutive-month grace period, you will no longer be considered over-income. If your family's income increases again to an amount that is over-income, you will receive another 24 consecutive month grace period.

If your income changes, contact us using the information provided below to learn the policy for requesting an interim reexamination.

*[PHA: Please note that the following section is optional. The regulations only require this level of detail for the second notice.]*

### **What if my family remains over-income in 24 consecutive months?**

According to the Continued Occupancy Policy, your family may continue to reside in a public housing unit even if you remain over-income after 24 months. However, your unit will no longer receive assistance from the federal public housing program so your rent will be calculated differently.

If you choose to stay in your unit after remaining over-income for 24 consecutive months, you will:

- Pay an “alternative non-public housing rent” (currently estimated at \$ \_\_\_\_)
- > The alternative rent is adjusted annually and subject to change.
- > You will receive a notification with more details on what to expect next if you decide to remain in a public housing unit after 24 consecutive months of being over-income.
- Need to sign a new lease for Non-Public Housing Over-Income (NPHOI) families.
  - > The NPHOI lease will need to be signed no later than 60 days after receiving notification of the end of the 24-month grace period or at the next lease renewal, whichever is sooner.

*[INSERT PHA CONTACT INFORMATION]*

**EXHIBIT 13-2: SAMPLE NOTICE FOR OVER-INCOME FAMILIES –  
INITIAL NOTIFICATION FOR TERMINATE ONLY OPTION<sup>2</sup>**

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<sup>2</sup> This sample notice is presented verbatim from HUD's sample forms used in the HOTMA Income and Assets Training Series, available at <https://www.hudexchange.info/resource/6849/hotma-sample-notices-for-overincome-families/>. Only the formatting has been changed to be consistent with the formatting used throughout this ACOP.

[name of PHA]

## Purpose

## What happens next?

If you think that we have made a mistake and your family should not be considered over-income, you may request a hearing by calling: XXX-XXX-XXXX or emailing [address] or requesting more information from PHA staff at: [location]. If you wish to request a hearing, please do so as soon as possible. If you do not wish to request a hearing, you do not need to do anything at this time.

### **What about changes to my income?**

We will continue to reexamine your income every 12 months as usual. After each reexamination, you will receive a notification like this one if your family is still over-income.

If your family's income drops below the over-income limit before the end of the 24 consecutive-month grace period, you will no longer be considered over-income. If your family's income increases again to an amount that is over-income, you will receive another 24 consecutive month grace period.

If your income changes, contact us using the information provided below to learn the policy for requesting an interim reexamination.

*[PHA: Please note that the following section is optional. The regulations only require this level of detail for the second notice.]*

### **What if my family remains over-income for 24 consecutive months?**

Within 30 days of the recertification, you will receive a notice like this one informing you that your family has remained over-income for 24 consecutive months. According to the Continued Occupancy Policy, families that remain over-income for 24 consecutive months must leave their units and find other housing in no more than \_\_\_\_ *[up to 6 depending on PHA policy]* months after receiving notification.

If your family continues to reside in the unit after \_\_\_\_ *[restate date]*, the PHA will begin eviction proceedings by issuing a notice to vacate.

Until the time of lease termination, you will continue to be a public housing program participant and will continue to be charged your choice of income-based or flat rent.

*[INSERT PHA CONTACT INFORMATION]*

**EXHIBIT 13-3: SAMPLE NOTICE FOR OVER-INCOME FAMILIES –  
12-MONTH NOTIFICATION FOR NPHOI FAMILY OPTION<sup>3</sup>**

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<sup>3</sup> This sample notice is presented verbatim from HUD's sample forms used in the HOTMA Income and Assets Training Series, available at <https://www.hudexchange.info/resource/6849/hotma-sample-notices-for-overincome-families/>. Only the formatting has been changed to be consistent with the formatting used throughout this ACOP.

# OVER-INCOME FAMILY 12 MONTH NOTIFICATION

---

*[name of PHA]*

---

Resident name:

Address:

Date:

## Purpose

The purpose of this notice is to inform you that \_\_\_\_\_ *[name of PHA]* has determined that your family's income is above the income limit (over-income) according to federal rules for public housing. This is your **12-month** (second) notice.

## What happens next?

For now, your rent will continue to be calculated as usual, you will continue to be offered a choice between income-based and flat rent, and **you do not have to move**. If your family remains over-income for the following 12 consecutive months, you will no longer be eligible for assistance under the public housing program but may remain in a public housing unit paying an alternative non-public housing rent calculated under federal rules for non-public housing tenants.

If you think that we have made a mistake and your family should not be considered over-income, you may request a hearing by calling: XXX-XXX-XXXX or emailing *[address]* or requesting more information from PHA staff at: *[location]*. If you wish to request a hearing, please do so as soon as possible. If you do not wish to request a hearing, you do not need to do anything at this time.

### **What about changes to my income?**

We will need to re-examine your income in 12 months. After the reexamination, you will receive a notification like this one if your family is still over-income.

If your family's income drops below the over-income limit before the end of the 24 consecutive-month grace period, you will no longer be considered over-income. If your family's income increases again to an amount that is over-income, you will receive another 24 consecutive month grace period.

If your income changes, contact us using the information provided below to learn the policy for requesting an interim reexamination.

### **What if my family remains over-income in consecutive 12 months?**

According to the Continued Occupancy Policy, your family may continue your tenancy even if you remain over-income for another 12 months (24 consecutive months total). However, your unit will no longer receive assistance from the federal public housing program so your rent will be calculated differently.

If you choose to remain in a public housing unit after the 24 month grace period, you will:

- No longer be a public housing program participant and will therefore not be eligible to participate in the resident council or programs specifically for public housing residents.
- Pay an “alternative non-public housing rent” (currently estimated at \$ \_\_\_\_)
- Need to sign a new lease

*[INSERT PHA CONTACT INFORMATION]*



**EXHIBIT 13-4: SAMPLE NOTICE FOR OVER-INCOME FAMILIES –  
12-MONTH NOTIFICATION FOR TERMINATE ONLY OPTION<sup>4</sup>**

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<sup>4</sup> This sample notice is presented verbatim from HUD's sample forms used in the HOTMA Income and Assets Training Series, available at <https://www.hudexchange.info/resource/6849/hotma-sample-notices-for-overincome-families/>. Only the formatting has been changed to be consistent with the formatting used throughout this ACOP.

# OVER-INCOME FAMILY 12 MONTH NOTIFICATION

---

*[name of PHA]*

Resident name:

Address:

Date:

## **Purpose**

The purpose of this notice is to inform you that \_\_\_\_\_ *[name of PHA]* has determined that your family's income is above the income limit (over-income) according to federal rules for public housing. This is your **12-month** (second) notice.

## **What happens next?**

For now, your rent will continue to be calculated as usual, you will continue to be offered a choice between income-based and flat rent, and **you do not have to move**. If your family remains over-income for the following 12 consecutive months, you will no longer be eligible for assistance under the public housing program.

If you think that we have made a mistake and your family should not be considered over-income, you may request a hearing by calling: XXX-XXX-XXXX or emailing *[address]* or requesting more information from PHA staff at: *[location]*. If you wish to request a hearing, please do so as soon as possible. If you do not wish to request a hearing, you do not need to do anything at this time.

### **What about changes to my income?**

We will need to re-examine your income in 12 months. After the reexamination, you will receive a notification like this one if your family is still over-income.

If your family's income drops below the over-income limit before the end of the 24 consecutive-month grace period, you will no longer be considered over-income. If your family's income increases again to an amount that is over-income, you will receive another 24 consecutive month grace period.

If your income changes, contact us using the information provided below to learn the policy for requesting an interim reexamination.

### **What if my family remains over-income in consecutive 12 months?**

Within 30 days of the recertification, you will receive a notice like this one informing you that your family has remained over-income for 24 consecutive months. According to the Continued Occupancy Policy, families that remain over-income for 24 consecutive months must leave their units and find other housing in no more than \_\_\_\_ *[up to 6 depending on PHA policy]* months after receiving notification.

If your family continues to reside in the unit after \_\_\_\_ *[restate date]*, \_\_\_\_ *[name of PHA]* will begin eviction proceedings by issuing a notice to vacate.

Until the time of lease termination, you will continue to be a public housing program participant and will continue to be charged your choice of income-based or flat rent.

*[INSERT PHA CONTACT INFORMATION]*

**EXHIBIT 13-5: SAMPLE NOTICE FOR OVER-INCOME FAMILIES –  
24-MONTH NOTIFICATION FOR NPHOI FAMILY OPTION<sup>5</sup>**

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<sup>5</sup> This sample notice is presented verbatim from HUD's sample forms used in the HOTMA Income and Assets Training Series, available at <https://www.hudexchange.info/resource/6849/hotma-sample-notices-for-over-income-families/>. Only the formatting has been changed to be consistent with the formatting used throughout this ACOP.

[name of PHA]

ACOP 11/1/24

### What do I need to do now?

According to the Continued Occupancy Policy, your family may continue your tenancy. However, because you will not receive assistance from the federal public housing program, your rent will be calculated differently.

If you choose to remain in a public housing unit, you will:

- Pay an "alternative non-public housing rent" (currently \$ \_\_\_\_\_)
- Need to sign a new lease within 60 days or at your next lease renewal (whichever is sooner)

If the lease is not signed within this time period, the PHA must terminate your tenancy by \_\_\_\_\_ [no more than 6 months after this notification]. However, per policy, \_\_\_\_\_ [name of PHA] may permit an over-income family to execute the lease after this period (up to 60 days), but before termination of the tenancy. In this case, the family must pay the total difference between the alternative non-public housing rent and your public housing rent dating back to the date when you were required to execute the lease.

If you choose to leave your unit, please inform us as soon as possible according to your existing lease.

To inform the PHA if you do not plan to remain in a public housing unit: *[Use this space to detail when and how and family can inform the PHA if they decline to stay in the unit.]*

[INSERT PHA CONTACT INFORMATION]

### EXHIBIT 13-6: SAMPLE NOTICE FOR OVER-INCOME FAMILIES – 24-MONTH NOTIFICATION FOR TERMINATION ONLY OPTION<sup>6</sup>

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<sup>6</sup> This sample notice is presented verbatim from HUD's sample forms used in the HOTMA Income and Assets Training Series, available at <https://www.hudexchange.info/resource/6849/hotma-sample-notices-for-over-income-families/>. Only the formatting has been changed to be consistent with the formatting used throughout this ACOP.

*These Sample Notices include provisions required per 24 CFR 960.507(c). Anything included in brackets and italic is meant as instruction to the PHA in creating its own notices. Example: [This text is meant as instruction to the PHA.]*

# OVER-INCOME FAMILY 24 MONTH NOTIFICATION

---

*[name of PHA]*

Resident name:

Address:

Date:

## **Purpose**

The purpose of this notice is to inform you that \_\_\_\_\_ *[name of PHA]* has determined that your family's income is above the income limit (over-income) according to federal rules for public housing. This is your **24-month** (third) notice.

You are no longer eligible for assistance under the public housing program.

## **What if I disagree that my family is over-income?**

If you think that we have made a mistake and your family should not be considered over-income, you may request a hearing by calling: XXX-XXX-XXXX or emailing *[address]* or requesting more information from PHA staff at: *[location]*. If you wish to request a hearing, please do so as soon as possible.

## **What about changes to my income?**

Changes to your income after you receive this notice will not change our determination. If necessary, you may request an interim reexamination, but a decrease in income or rent will not make you eligible to remain. Because your family has been over-income for 24 consecutive months, you are no longer eligible for assistance under the public housing program.



### **What do I need to do now?**

According to the Continued Occupancy Policy, your family cannot continue your tenancy. You must find other housing as soon as possible. Our policy is to allow families up to \_\_\_\_ *[up to 6 depending on PHA policy]* months to find other housing.

If your family continues to reside in the unit after \_\_\_\_ *[restate date]*, the PHA will begin eviction proceedings by issuing a notice to vacate.

Until the time of lease termination, you will continue to be a public housing program participant and will continue to be charged your choice of income-based or flat rent.

*[The following is an optional section where the PHA may include referral services to support a family in finding new housing.]*

The following services are available to assist you:

*[INSERT PHA CONTACT INFORMATION]*

## Chapter 14

### GRIEVANCES AND APPEALS

#### INTRODUCTION

This chapter discusses grievances and appeals pertaining to PHA actions or failures to act that adversely affect public housing applicants or residents. The policies are discussed in the following three parts:

Part I: Informal Hearings for Public Housing Applicants. This part outlines the requirements and procedures for informal hearings for public housing applicants.

Part II: Informal Hearings with Regard to Noncitizens. This part discusses informal hearings regarding citizenship status and where they differ from the requirements for general applicant and tenant grievances.

Part III: Grievance Procedures for Public Housing Residents. This part outlines the requirements and procedures for handling grievances for public housing residents.

Note that this chapter is not the PHA's grievance procedure. The grievance procedure is a document separate from the ACOP. This chapter of the ACOP provides the policies that drive the grievance procedure. A sample grievance procedure is provided as Exhibit 14-1. However, please note that the procedure provided is only a sample and is designed to match up with the default policies in the model ACOP. As such, the PHA would need to modify accordingly should any alternative policy decisions be adopted.

#### PART I: INFORMAL HEARINGS FOR PUBLIC HOUSING APPLICANTS

##### 14-1.A. OVERVIEW

When the PHA makes a decision that has a negative impact on an applicant family, the family is often entitled to appeal the decision. For applicants, the appeal takes the form of an informal hearing. HUD regulations do not provide a structure for or requirements regarding informal hearings for applicants (except with regard to citizenship status, to be covered in Part II). This part discusses the PHA policies necessary to respond to applicant appeals through the informal hearing process.

#### **14-I.B. INFORMAL HEARING PROCESS [24 CFR 960.208(a) and PH Occ GB, p. 58]**

Informal hearings are provided for public housing applicants. An applicant is someone who has applied for admission to the public housing program but is not yet a tenant in the program. Informal hearings are intended to provide a means for an applicant to dispute a determination of ineligibility for admission to a project [24 CFR 960.208(a)]. Applicants to public housing are not entitled to the same hearing process afforded tenants under the PHA grievance procedures [24 CFR 960.53(a) and PH Occ GB, p. 58].

Informal hearings provide applicants the opportunity to review the reasons for denial of admission and to present evidence to refute the grounds for denial.

##### **Use of Informal Hearing Process**

While the PHA must offer the opportunity of an informal hearing to applicants who have been determined as ineligible for admission, the PHA could make the informal hearing process available to applicants who wish to dispute other PHA actions that adversely affect them.

##### **PHA Policy**

The PHA will only offer informal hearings to applicants for the purpose of disputing denials of admission.

##### **Notice of Denial [24 CFR 960.208(a)]**

The PHA must give an applicant prompt notice of a decision denying eligibility for admission. The notice must contain a brief statement of the reasons for the PHA decision and must also state that the applicant may request an informal hearing to dispute the decision. The notice must describe how to obtain the informal hearing.

##### **PHA Policy**

As applicable, the PHA's notice of denial will include information about required or requested remote informal hearings.

When denying eligibility for admission, the PHA must provide the family a notice of VAWA rights (form HUD-5380) as well as the HUD VAWA self-certification form (form HUD-5382) in accordance with the Violence against Women Act, and as outlined in 16-VII.C. The notice and self-certification form must accompany the written notification of the denial of eligibility determination.

Prior to notification of denial based on information obtained from criminal or sex offender registration records, the family, in some cases, must be given the opportunity to dispute the information in those records which would be the basis of the denial. See Section 3-III.G for details concerning this requirement.

## **Scheduling an Informal Hearing**

### **PHA Policy**

A request for an informal hearing must be made in writing and delivered to the PHA either in person or by first class mail, by the close of the business day, no later than 10 business days from the date of the PHA's notification of denial of admission.

The PHA will schedule and send written notice of the informal hearing within 10 business days of the family's request.

If the PHA informal hearing will be conducted remotely, at the time the notice is sent to the family, the family will be informed:

Regarding the processes involved in a remote informal hearing;

That the PHA will provide technical assistance prior to and during the informal hearing, if needed; and

That if the family or any individual witness has any technological, resource, or accessibility barriers preventing them from fully accessing the remote informal hearing, the family may inform the PHA and the PHA will assist the family in either resolving the issues or allow the family to participate in an in-person informal hearing, as appropriate.

## **Conducting an Informal Hearing [PH Occ GB, p. 58]**

### **PHA Policy**

The informal hearing will be conducted by a person other than the one who made or approved the decision under review, or a subordinate of this person.

The applicant will be provided an opportunity to present written or oral objections to the decision of the PHA.

The person conducting the informal hearing will make a recommendation to the PHA, but the PHA is responsible for making the final decision as to whether admission should be granted or denied.

## **Remote Informal Hearings [Notice PIH 2020-32]**

There is no requirement that informal hearings be conducted in-person, and as such, HUD allows PHAs to conduct all or a portion of their informal hearings remotely either over the phone, via video conferencing, or through other virtual platforms. If the PHA chooses to conduct remote informal hearings, applicants may still request an in-person informal hearing, as applicable.

### **PHA Policy**

The PHA has the sole discretion to require that informal hearings be conducted remotely in case of local, state, or national physical distancing orders, and in cases of inclement weather or natural disaster.

In addition, the PHA will conduct an informal hearing remotely upon request of the applicant as a reasonable accommodation for a person with a disability, if an applicant does not have child care or transportation that would enable them to attend the informal hearing, or if the applicant believes an in-person informal hearing would create an undue health risk. The PHA will consider other reasonable requests for a remote informal hearing on a case-by-case basis.

### **Ensuring Accessibility for Persons with Disabilities and LEP Individuals**

As with in-person informal hearings, the platform for conducting remote informal hearings must be accessible to persons with disabilities and the informal hearing must be conducted in accordance with Section 504 and accessibility requirements. This includes ensuring any information, websites, emails, digital notifications, and other virtual platforms are accessible for persons with vision, hearing, and other disabilities. Further, providing effective communication in a digital context may require the use of individualized auxiliary aids or services, such as audio description, captioning, sign language and other types of interpreters, keyboard accessibility, accessible documents, screen reader support, and transcripts. Auxiliary aids or services must be provided in accessible formats, in a timely manner, and in such a way to protect the privacy and independence of the individual. PHAs may never request or require that individuals with disabilities provide their own auxiliary aids or services, including for remote informal hearings.

If no method of conducting a remote informal hearing is available that appropriately accommodates an individual's disability, the PHA may not hold against the individual their inability to participate in the remote informal review, and the PHA should consider whether postponing the remote informal hearing to a later date is appropriate or whether there is a suitable alternative.

Due to the individualized nature of disability, the appropriate auxiliary aid or service necessary, or reasonable accommodation, will depend on the specific circumstances and requirements.

As with in-person hearings, Limited English Proficiency (LEP) requirements also apply to remote informal hearings, including the use of interpretation services and document translation. See Chapter 2 for a more thorough discussion of accessibility and LEP requirements, all of which apply in the context of remote informal hearings.

## **Conducting Remote Informal Hearings [Notice PIH 2020-32]**

The PHA must ensure that the lack of technology or inability to use technology for remote informal hearings does not pose a disadvantage to families that may not be apparent to the PHA.

The PHA should determine through a survey or other means if these barriers exist prior to conducting the remote informal hearing and, if the family does not have the proper technology to fully participate, either postpone the informal hearing or provide an alternative means of access.

As with in-person informal hearings, the PHA must provide all materials presented, whether paper or electronic, to the family prior to the remote informal hearing. The family must also be provided with an accessible means by which to transmit their own evidence.

The PHA must ensure that the applicant has the right to hear and be heard. All PHA policies and processes for remote informal hearings will be conducted in accordance with due process requirements and will be in compliance with HUD regulations at 24 CFR 966.56 and the guidance for conducting remote hearings specified in Notice PIH 2020-32.

#### PHA Policy

The PHA will conduct remote informal hearings via a video conferencing platform, when available. If, after attempting to resolve any barriers, applicants are unable to adequately access the video conferencing platform at any point, or upon applicant request, the informal hearing will be conducted by telephone conferencing call-in. If the family is unable to adequately access the telephone conferencing call-in at any point, the remote informal hearing will be postponed, and an in-person alternative will be provided promptly within a reasonable time.

At least five business days prior to the scheduled remote hearing, the PHA will provide the family with login information and/or conferencing call-in information and an electronic copy of all materials being presented via first class mail and/or email. The notice will advise the family of technological requirements for the hearing and request the family notify the PHA of any known barriers. The PHA will resolve any barriers using the guidance in Section 6 of Notice PIH 2020-32, including offering the family the opportunity to attend an in-person hearing.

If the informal hearing is to be conducted remotely, the PHA will require the family to provide any documents directly relevant to the informal hearing at least 24 hours before the scheduled hearing through the mail or via email. The PHA will scan and email copies of these documents to the PHA representative and to the person conducting the informal hearing the same day.

Documents will be shared electronically whenever possible.

The PHA will follow up the email with a phone call and/or email to the applicant at least one business day prior to the remote informal hearing to ensure that the applicant received all information and is comfortable accessing the video conferencing or call-in platform.

The PHA will ensure that all electronic information stored or transmitted with respect to the informal hearing is secure, including protecting personally identifiable information (PII), and meets the requirements for accessibility for persons with disabilities and persons with LEP.

## Informal Hearing Decision [PH Occ GB, p. 58]

### PHA Policy

The PHA will notify the applicant of the PHA's final decision, including a brief statement of the reasons for the final decision.

In rendering a decision, the PHA will evaluate the following matters:

Whether or not the grounds for denial were stated factually in the notice

The validity of grounds for denial of admission. If the grounds for denial are not specified in the regulations or in PHA policy, then the decision to deny assistance will be overturned. See Chapter 3 for a detailed discussion of the grounds for applicant denial.

The validity of the evidence. The PHA will evaluate whether the facts presented prove the grounds for denial of admission. If the facts prove that there are grounds for denial, and the denial is required by HUD, the PHA will uphold the decision to deny admission.

If the facts prove the grounds for denial, and the denial is discretionary, the PHA will consider the recommendation of the person conducting the informal hearing in making the final decision whether to deny admission.

The PHA will notify the applicant of the final decision, including a statement explaining the reason(s) for the decision. The notice will be mailed, with return receipt requested, within 10 business days of the informal hearing, to the applicant and their representative, if any.

If the informal hearing decision overturns the denial, processing for admission will resume.

If the family fails to appear for their informal hearing, the denial of admission will stand and the family will be so notified.

### **Reasonable Accommodation for Persons with Disabilities [24 CFR 966.7]**

Persons with disabilities may request reasonable accommodations to participate in the informal hearing process and the PHA must consider such accommodations. The PHA must also consider reasonable accommodation requests pertaining to the reasons for denial if related to the person's disability. See Chapter 2 for more detail pertaining to reasonable accommodation requests.

## **PART II: INFORMAL HEARINGS WITH REGARD TO NONCITIZENS**

### **14-II.A. HEARING AND APPEAL PROVISIONS FOR NONCITIZENS [24 CFR 5.514]**

Denial or termination of assistance based on immigration status is subject to special hearing and notice rules. These special hearings are referred to in the regulations as informal hearings, but the requirements for such hearings are different from the informal hearings used to deny applicants for reasons other than immigration status.

Assistance to a family may not be delayed, denied, or terminated on the basis of immigration status at any time prior to a decision under the United States Citizenship and Immigration Services (USCIS) appeal process. Assistance to a family may not be terminated or denied while the PHA hearing is pending, but assistance to an applicant may be delayed pending the completion of the informal hearing.

A decision against a family member, issued in accordance with the USCIS appeal process or the PHA informal hearing process, does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial procedures.

#### **Notice of Denial or Termination of Assistance [24 CFR 5.514(d)]**

As discussed in Chapters 3 and 13, the notice of denial or termination of assistance for noncitizens must advise the family of any of the following that apply:

- That financial assistance will be denied or terminated and provide a brief explanation of the reasons for the proposed denial or termination of assistance.
- The family may be eligible for proration of assistance.
- In the case of a tenant, the criteria and procedures for obtaining relief under the provisions for preservation of families [24 CFR 5.514 and 5.518].
- That the family has a right to request an appeal to the USCIS of the results of secondary verification of immigration status and to submit additional documentation or explanation in support of the appeal.
- That the family has a right to request an informal hearing with the PHA either upon completion of the USCIS appeal or in lieu of the USCIS appeal.
- For applicants, assistance may not be delayed until the conclusion of the USCIS appeal process, but assistance may be delayed during the period of the informal hearing process.



## **United States Citizenship and Immigration Services Appeal Process [24 CFR 5.514(e)]**

When the PHA receives notification that the USCIS secondary verification failed to confirm eligible immigration status, the PHA must notify the family of the results of the USCIS verification. The family will have 30 days from the date of the notification to request an appeal of the USCIS results. The request for appeal must be made by the family in writing directly to the USCIS. The family must provide the PHA with a copy of the written request for appeal and proof of mailing.

### **PHA Policy**

The PHA will notify the family in writing of the results of the USCIS secondary verification within 10 business days of receiving the results.

The family must provide the PHA with a copy of the written request for appeal and proof of mailing within 10 business days of sending the request to the USCIS.

The family must forward to the designated USCIS office any additional documentation or written explanation in support of the appeal. This material must include a copy of the USCIS document verification request (used to process the secondary request) or such other form specified by the USCIS, and a letter indicating that the family is requesting an appeal of the USCIS immigration status verification results.

The USCIS will notify the family, with a copy to the PHA, of its decision. When the USCIS notifies the PHA of the decision, the PHA must notify the family of its right to request an informal hearing.

### **PHA Policy**

The PHA will send written notice to the family of its right to request an informal hearing within 10 business days of receiving notice of the USCIS decision regarding the family's immigration status.

## **Informal Hearing Procedures for Applicants [24 CFR 5.514(f)]**

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, an applicant family may request that the PHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of the PHA notice of denial, or within 30 days of receipt of the USCIS appeal decision.

The informal hearing procedures for applicant families are described below.

### ***Informal Hearing Officer***

The PHA must provide an informal hearing before an impartial individual, other than a person who made or approved the decision under review, and other than a person who is a subordinate of the person who made or approved the decision.

### ***Evidence***

The family must be provided the opportunity to examine and copy at the family's expense, at a reasonable time in advance of the hearing, any documents in the possession of the PHA pertaining to the family's eligibility status, or in the possession of the USCIS (as permitted by USCIS requirements), including any records and regulations that may be relevant to the hearing.

### **PHA Policy**

The family will be allowed to copy any documents related to the hearing at a cost of \$0.25 per page. The family must request discovery of PHA documents no later than 12:00 p.m. on the business day prior to the hearing.

The family must be provided the opportunity to present evidence and arguments in support of eligible status. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

The family must also be provided the opportunity to refute evidence relied upon by the PHA, and to confront and cross-examine all witnesses on whose testimony or information the PHA relies.

### ***Representation and Interpretive Services***

The family is entitled to be represented by an attorney or other designee, at the family's expense, and to have such person make statements on the family's behalf.

The family is entitled to request an interpreter. The PHA is obligated to provide a competent interpreter, free of charge, upon request. The family may also or instead provide its own interpreter, at the expense of the family.

### ***Recording of the Hearing***

The family is entitled to have the hearing recorded by audiotape. The PHA may, but is not required to, provide a transcript of the hearing.

### **PHA Policy**

The PHA will not provide a transcript of an audio taped informal hearing.  
***Hearing Decision***

The PHA must provide the family with a written notice of the final decision, based solely on the facts presented at the hearing, within 14 calendar days of the date of the informal hearing. The notice must state the basis for the decision.

**Retention of Documents [24 CFR 5.514(h)]**

The PHA must retain for a minimum of 5 years the following documents that may have been submitted to the PHA by the family, or provided to the PHA as part of the USCIS appeal or the PHA informal hearing process:

- The application for assistance
- The form completed by the family for income reexamination
- Photocopies of any original documents, including original USCIS documents
- The signed verification consent form
- The USCIS verification results
- The request for a USCIS appeal
- The final USCIS determination
- The request for an informal hearing
- The final informal hearing decision

**Informal Hearing Procedures for Residents [24 CFR 5.514(f)]**

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, a resident family may request that the PHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of the PHA notice of termination, or within 30 days of receipt of the USCIS appeal decision.

The informal hearing procedures for resident families whose tenancy is being terminated based on immigration status is the same as for any grievance under the grievance procedures for resident families found in Part III below.

## **PART III: GRIEVANCE PROCEDURES FOR PUBLIC HOUSING RESIDENTS**

### **14-III.A. REQUIREMENTS [24 CFR 966.52]**

PHAs must have a grievance procedure in place through which residents of public housing are provided an opportunity to grieve any PHA action or failure to act involving the lease or PHA policies which adversely affect their rights, duties, welfare, or status. The PHA must not only meet the minimal procedural due process requirements provided under the regulations but must also meet any additional requirements imposed by local, state or federal law.

The PHA grievance procedure must be included in, or incorporated by reference in, the lease.

#### **PHA Policy**

The PHA grievance procedure will be incorporated by reference in the tenant lease.

The PHA must provide at least 30 days' notice to tenants and resident organizations setting forth proposed changes in the PHA grievance procedure and provide an opportunity to present written comments. Comments submitted must be considered by the PHA before adoption of any changes to the grievance procedure by the PHA.

#### **PHA Policy**

Residents and resident organizations will have 30 calendar days from the date they are notified by the PHA of any proposed changes in the PHA grievance procedure, to submit written comments to the PHA.

The PHA must furnish a copy of the grievance procedure to each tenant and to resident organizations.

#### 14-III.B. DEFINITIONS [24 CFR 966.53; 24 CFR 966.51(a)(2)(i)]

There are several terms used by HUD with regard to public housing grievance procedures, which take on specific meanings different from their common usage. These terms are as follows:

- **Grievance** – any dispute which a tenant may have with respect to PHA action or failure to act in accordance with the individual tenant's lease or PHA regulations which adversely affect the individual tenant's rights, duties, welfare or status
- **Complainant** – any tenant whose grievance is presented to the PHA or at the project management office
- **Due Process Determination** – a determination by HUD that law of the jurisdiction requires that the tenant must be given the opportunity for a hearing in court which provides the basic elements of due process before eviction from the dwelling unit
- **Expedited Grievance** – a procedure established by the PHA for any grievance or termination that involves:
  - Any criminal activity that threatens the health, safety, or right to peaceful enjoyment or the PHA's public housing premises by other residents or employees of the PHA; or
  - Any drug-related criminal activity on or off the premises
- **Elements of Due Process** – an eviction action or a termination of tenancy in a state or local court in which the following procedural safeguards are required:
  - Adequate notice to the tenant of the grounds for terminating the tenancy and for eviction
  - Right of the tenant to be represented by counsel
  - Opportunity for the tenant to refute the evidence presented by the PHA including the right to confront and cross-examine witnesses and to present any affirmative legal or equitable defense which the tenant may have
  - A decision on the merits
- **Hearing Officer** – an impartial person or selected by the PHA, other than the person who made or approved the decision under review, or a subordinate of that person. The individual or individuals do not need legal training.
- **Tenant** – the adult person (or persons) (other than a live-in aide):
  - Who resides in the unit, and who executed the lease with the PHA as lessee of the dwelling unit, or, if no such person now resides in the unit,
  - Who resides in the unit, and who is the remaining head of household of the tenant family residing in the dwelling unit
- **Resident Organization** – includes a resident management corporation

#### 14-III.C. APPLICABILITY [24 CFR 966.51]

Grievances could potentially address most aspects of a PHA's operation. However, there are some situations for which the grievance procedure is not applicable.

The grievance procedure is applicable only to individual tenant issues relating to the PHA. It is not applicable to disputes between tenants not involving the PHA. Class grievances are not subject to the grievance procedure and the grievance procedure is not to be used as a forum for initiating or negotiating policy changes of the PHA.

If HUD has issued a due process determination, a PHA may exclude from the PHA grievance procedure any grievance concerning a termination of tenancy or eviction that involves:

- Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises of other residents or employees of the PHA;
- Any violent or drug-related criminal activity on or off such premises; or
- Any criminal activity that resulted in felony conviction of a household member

In states without due process determinations, PHAs must grant opportunity for grievance hearings for all lease terminations, regardless of cause, with the following exception: PHAs may use expedited grievance procedures for the excluded categories listed above. These expedited grievance procedures are described in Section 14-III.E. below.

If HUD has issued a due process determination, the PHA may evict through the state/local judicial eviction procedures. In this case, the PHA is not required to provide the opportunity for a hearing under the PHA's grievance procedure as described above.

#### PHA Policy

The PHA is located in a HUD-declared due process state. Therefore, the PHA will not offer grievance hearings for lease terminations involving criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other residents or employees of the PHA, for violent or drug-related criminal activity on or off the premises, or for any criminal activity that resulted in felony conviction of a household member.

See Chapter 13 for related policies on the content of termination notices.

#### **14-III.D. INFORMAL SETTLEMENT OF GRIEVANCE [24 CFR 966.54]**

HUD regulations state that any grievance must be personally presented, either orally or in writing, to the PHA office or to the office of the housing development in which the complainant resides so that the grievance may be discussed informally and settled without a hearing.

##### **PHA Policy**

The PHA will accept requests for an informal settlement of a grievance in writing (including emailed requests), to the PHA office within 10 business days of the grievable event. Within 10 business days of receipt of the request the PHA will arrange a meeting with the tenant at a mutually agreeable time and confirm such meeting in writing to the tenant. The informal settlement may be conducted remotely as required by the PHA or may be conducted remotely upon consideration of the request of the tenant. See 14-III.G for information on how and under what circumstances remote informal settlements may be conducted.

If a tenant fails to attend the scheduled meeting without prior notice, the PHA will reschedule the appointment only if the tenant can show good cause for failing to appear, or if it is needed as a reasonable accommodation for a person with disabilities.

Good cause is defined as an unavoidable conflict which seriously affects the health, safety or welfare of the family.

HUD regulations require that a summary of such discussion will be prepared within a reasonable time and one copy will be given to the tenant and one retained in the PHA's tenant file.

The summary must specify the names of the participants, dates of meeting, the nature of the proposed disposition of the complaint and the specific reasons therefore, and will specify the procedures by which a hearing may be obtained if the complainant is not satisfied.

##### **PHA Policy**

The PHA will prepare a summary of the informal settlement within five business days; one copy to be given to the tenant and one copy to be retained in the PHA's tenant file.

For PHAs who have the option to establish an expedited grievance procedure, and who exercise this option, the informal settlement of grievances is not applicable to those grievances for which the expedited grievance procedure applies.

### **14-III.E. PROCEDURES TO OBTAIN A HEARING Requests for Hearing and Failure to Request**

#### **PHA Policy**

The resident must submit a written request (including emailed requests) for a grievance hearing to the PHA within five business days of the tenant's receipt of the summary of the informal settlement.

If the complainant does not request a hearing, the PHA's disposition of the grievance under the informal settlement process will become final. However, failure to request a hearing does not constitute a waiver by the complainant of the right to contest the PHA's action in disposing of the complaint in an appropriate judicial proceeding.

#### **Scheduling of Hearings [24 CFR 966.56(a)]**

If the complainant has complied with all requirements for requesting a hearing as described above, a hearing must be scheduled by the hearing officer promptly for a time and place reasonably convenient to both the complainant and the PHA. A written notification specifying the time, place and the procedures governing the hearing must be delivered to the complainant and the appropriate PHA official.

#### **PHA Policy**

Within 10 business days of receiving a written request for a hearing, the hearing officer will schedule and send written notice of the hearing to both the complainant and the PHA.

If the PHA hearing will be conducted remotely, at the time the notice is sent to the family, the family will be notified:

Regarding the processes involved in a remote grievance hearing;

That the PHA will provide technical assistance prior to and during the hearing, if needed; and

That if the family or any individual witness has any technological, resource, or accessibility barriers, the family may inform the PHA and the PHA will assist the family in either resolving the issue or allow the family to participate in an in-person hearing, as appropriate.

The PHA may wish to permit the tenant to request to reschedule a hearing for good cause.

#### **PHA Policy**

The tenant may request to reschedule a hearing for good cause, or if it is needed as a reasonable accommodation for a person with disabilities. Good cause is defined as an unavoidable conflict which seriously affects the health, safety, or welfare of the family. Requests to reschedule a hearing must be made in writing prior to the hearing date. At its discretion, the PHA may request documentation of the "good cause" prior to rescheduling the hearing.

#### **Expedited Grievance Procedure [24 CFR 966.52(a)]**



The PHA may establish an expedited grievance procedure for any grievance concerning a termination of tenancy or eviction that involves:

- Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents or employees of the PHA;
- Any drug-related criminal activity on or near such premises; or
- Any criminal activity that resulted in felony conviction of a household member.

In such expedited grievances, the informal settlement of grievances as discussed in 14-III.D is not applicable.

The PHA may adopt special procedures concerning expedited hearings, including provisions for expedited notice or scheduling, or provisions for expedited decision on the grievance.

#### PHA Policy

The PHA will not offer expedited grievance procedures.

#### **14-III.F. SELECTION OF HEARING OFFICER [24 CFR 966.53(e)]**

The grievance hearing must be conducted by an impartial person or persons appointed by the PHA, other than the person who made or approved the PHA action under review, or a subordinate of such person. The PHA must describe their policies for selection of a hearing officer in their lease.

##### PHA Policy

PHA grievance hearings will be conducted by a single hearing officer and not a panel.

The PHA will appoint an impartial person who was not involved in the decision under appeal. If a designated staff member (such as the program manager) was involved in the decision, or is a subordinate of such person, an alternate hearing officer will be selected.

The PHA may select designated staff members who were not involved in the decision under appeal in certain circumstances, such as appeals involving discrimination claims or denials of requests for reasonable accommodations.

PHAs must describe their policies for selection of a hearing officer in their lease forms. Changes to the public housing lease are subject to a 30-day comment period [24 CFR 966.4].

#### **14-III.G. REMOTE HEARINGS [Notice PIH 2020-32]**

There is no requirement that grievance hearings be conducted in-person, and as such, HUD allows PHAs to conduct all or a portion of their grievance hearings remotely either over the phone, via video conferencing, or through other virtual platforms. If the PHA chooses to conduct remote grievance hearings, applicants may still request an in-person hearing, as applicable.

##### **PHA Policy**

The PHA has the sole discretion to require that hearings be conducted remotely in case of local, state, or national physical distancing orders, and in cases of inclement weather or natural disaster.

In addition, the PHA will conduct a hearing remotely upon request as a reasonable accommodation for a person with a disability, if a tenant does not have child care or transportation that would enable them to attend the hearing, or if the tenant believes an in-person hearing would create an undue health risk. The PHA will consider other reasonable requests for a remote hearing on a case-by-case basis.

#### **Discovery of Documents Before the Remote Hearing**

##### **PHA Policy**

If the hearing will be conducted remotely, the PHA will compile a hearing packet, consisting of all documents the PHA intends to produce at the hearing. The PHA will mail copies of the hearing packet to the tenant, the tenant's representatives, if any, and the hearing officer at least three days before the scheduled remote hearing. The original hearing packet will be in the possession of the PHA representative and retained by the PHA.

If the hearing is to be conducted remotely, the PHA will require the resident to provide any documents directly relevant to the hearing at least 24 hours before the scheduled hearing through the mail, via email, or text. The PHA will scan and email copies of these documents to the hearing officer and the PHA representative the same day they are received.

Documents will be shared electronically whenever possible.

## **Ensuring Accessibility for Persons with Disabilities and LEP Individuals**

As with in-person grievance hearings, the platform for conducting remote grievance hearings must be accessible to persons with disabilities and the grievance hearings must be conducted in accordance with Section 504 and accessibility requirements. This includes ensuring any information, websites, emails, digital notifications, and other virtual platforms are accessible for persons with vision, hearing, and other disabilities. Further, providing effective communication in a digital context may require the use of individualized auxiliary aids or services, such as audio description, captioning, sign language and other types of interpreters, keyboard accessibility, accessible documents, screen reader support, and transcripts. Auxiliary aids or services must be provided in accessible formats, in a timely manner, and in such a way to protect the privacy and independence of the individual. PHAs may never request or require that individuals with disabilities provide their own auxiliary aids or services, including for remote grievance hearings.

If no method of conducting a remote grievance hearing is available that appropriately accommodates an individual's disability, the PHA may not hold against the individual their inability to participate in the remote grievance hearing, and the PHA should consider whether postponing the remote hearing to a later date is appropriate or whether there is a suitable alternative.

Due to the individualized nature of disability, the appropriate auxiliary aid or service necessary, or reasonable accommodation will depend on the specific circumstances and requirements.

As with in-person reviews, Limited English Proficiency (LEP) requirements also apply to remote grievance hearings, including the use of interpretation services and document translation. See Chapter 2 for a more thorough discussion of accessibility and LEP requirements, all of which apply in the context of remote grievance hearings.

## **Conducting Hearings Remotely**

The PHA must ensure that the lack of technology or inability to use technology for remote grievance hearings does not pose a disadvantage to families that may not be apparent to the PHA. The PHA should determine through a survey or other means if these barriers exist prior to conducting the remote grievance hearing and, if the family does not have the proper technology to fully participate, either postpone the hearing or provide an alternative means of access.

As with in-person grievance hearings, the PHA must provide all materials presented, whether paper or electronic, to the family prior to the remote grievance hearing. The family must also be provided with an accessible means by which to transmit their own evidence.

The PHA's essential responsibility is to ensure grievance hearings meet the requirements of due process and comply with HUD regulations. Therefore, all PHA policies and processes for remote grievance hearings will be conducted in accordance with due process requirements and will be in compliance with HUD regulations at 24 CFR 966.56 and the guidance for conducting remote hearings specified in Notice PIH 2020-32.

### PHA Policy

The PHA will conduct remote grievance hearings via a video conferencing platform, when available. If, after attempting to resolve any barriers, participants are unable to adequately access the video conferencing platform at any point, or upon request, the grievance hearing will be conducted by telephone conferencing call-in. If the family is unable to adequately access the telephone conferencing call-in at any point, the remote grievance hearing will be postponed, and an in-person alternative will be provided promptly within a reasonable time.

At least five business days prior to the scheduled remote hearing, the PHA will provide the family with login information and/or conferencing call-in information and an electronic copy of all materials being presented via first class mail and/or email. The notice will advise the family of technological requirements for the hearing and request the family notify the PHA of any known barriers. The PHA will resolve any barriers using the guidance in Section 6 of Notice PIH 2020-32, including offering the family the opportunity to attend an in-person hearing.

The PHA will follow up with a phone call and/or email to the family at least one business day prior to the remote grievance hearing to ensure that the family received all information and is comfortable accessing the video conferencing or call-in platform.

The PHA will ensure that all electronic information stored or transmitted with respect to the grievance hearing is secure, including protecting personally identifiable information (PII), and meets the requirements for accessibility for persons with disabilities and persons with LEP.

#### **14-III.H. PROCEDURES GOVERNING THE HEARING [24 CFR 966.56]**

##### **Rights of Complainant [24 CFR 966.56(b)]**

The complainant will be afforded a fair hearing. This includes:

- The opportunity to examine before the grievance hearing any PHA documents, including records and regulations that are directly relevant to the hearing. The tenant must be allowed to copy any such document at the tenant's expense. If the PHA does not make the document available for examination upon request by the complainant, the PHA may not rely on such document at the grievance hearing.

##### PHA Policy

The tenant will be allowed to copy any documents related to the hearing at a cost of \$0.25 per page. There will be no charge for documents emailed by the PHA. The family must request discovery of PHA documents no later than 12:00 p.m. on the business day prior to the hearing.

- The right to be represented by counsel or other person chosen to represent the tenant, and to have such person make statements on the tenant's behalf.

##### PHA Policy

Hearings may be attended by the following applicable persons:

The PHA representatives and any witnesses for the PHA

The tenant and any witnesses for the tenant

The tenant's counsel or other representative

Any other person approved by the PHA as a reasonable accommodation for a person with a disability

- The right to a private hearing unless the complainant requests a public hearing.
- The right to present evidence and arguments in support of the tenant's complaint, to controvert evidence relied on by the PHA or project management, and to confront and cross-examine all witnesses upon whose testimony or information the PHA or project management relies.
- A decision based solely and exclusively upon the facts presented at the hearing.

#### **Failure to Appear [24 CFR 966.56(c)]**

If the complainant or the PHA fails to appear at a scheduled hearing, the hearing officer may make a determination to postpone the hearing for no more than five business days or may make a determination that the party has waived their right to a hearing. Both the complainant and the PHA must be notified of the determination by the hearing officer provided that a determination that the complainant has waived their right to a hearing will not constitute a waiver of any right the complainant may have to contest the PHA's disposition of the grievance in an appropriate judicial proceeding.

There may be times when a complainant does not appear due to unforeseen circumstances which are out of their control and are no fault of their own.

#### **PHA Policy**

If the tenant does not appear at the scheduled time of the hearing, the hearing officer will wait up to 15 minutes. If the tenant appears within 15 minutes of the scheduled time, the hearing will be held. If the tenant does not arrive within 15 minutes of the scheduled time, they will be considered to have failed to appear.

If the tenant fails to appear and was unable to reschedule the hearing in advance, the tenant must contact the PHA within 24 hours of the scheduled hearing date, excluding weekends and holidays. The hearing officer will reschedule the hearing only if the tenant can show good cause for the failure to appear, or it is needed as a reasonable accommodation for a person with disabilities.

“Good cause” is defined as an unavoidable conflict which seriously affects the health, safety, or welfare of the family.

## **General Procedures [24 CFR 966.56(d), (e)]**

At the hearing, the complainant must first make a showing of an entitlement to the relief sought and thereafter the PHA must sustain the burden of justifying the PHA action or failure to act against which the complaint is directed [24 CFR 966.56(d)].

The hearing is conducted informally by the hearing officer. The PHA and the tenant must be given the opportunity to present oral or documentary evidence pertinent to the facts and issues raised by the complaint and to question any witnesses.

### PHA Policy

Any evidence to be considered by the hearing officer must be presented at the time of the hearing. There are four categories of evidence.

**Oral evidence:** the testimony of witnesses

**Documentary evidence:** a writing which is relevant to the case, for example, a letter written to the PHA. Writings include all forms of recorded communication or representation, including letters, emails, words, pictures, sounds, videotapes or symbols or combinations thereof.

**Demonstrative evidence:** Evidence created specifically for the hearing and presented as an illustrative aid to assist the hearing officer, such as a model, a chart or other diagram.

**Real evidence:** A tangible item relating directly to the case.

*Hearsay Evidence* is evidence based not on a witness' personal knowledge. In and of itself, hearsay evidence carries no weight when making a finding of fact. The hearing officer may include hearsay evidence when considering their decision if it is corroborated by other evidence. Even though hearsay evidence is generally admissible in a hearing, the hearing officer will not base a hearing decision on hearsay alone unless there is clear probative value and credibility of the evidence, and the party seeking the change has met the burden of proof.

If the PHA fails to comply with the discovery requirements (providing the tenant with the opportunity to examine PHA documents prior to the grievance hearing), the hearing officer will refuse to admit such evidence.

Other than the failure of the PHA to comply with discovery requirements, the hearing officer has the authority to overrule any objections to evidence.

The complainant or the PHA may arrange, in advance and at the expense of the party making the arrangement, for a transcript of the hearing. Any interested party may purchase a copy of such transcript [24 CFR 966.56(e)].

### PHA Policy



If the complainant would like the PHA to record the proceedings by audiotape, the request must be made to the PHA by 12:00 p.m. on the business day prior to the hearing.

The PHA will consider that an audio tape recording of the proceedings is a transcript.

**Accommodations of Persons with Disabilities [24 CFR 966.56(f)]**

The PHA must provide reasonable accommodation for persons with disabilities to participate in the hearing. Reasonable accommodation may include qualified sign language interpreters, readers, accessible locations, or attendants.

If the tenant is visually impaired, any notice to the tenant which is required in the grievance process must be in an accessible format.

See Chapter 2 for a thorough discussion of the PHA's responsibilities pertaining to reasonable accommodation.

**Limited English Proficiency (24 CFR 966.56(g))**

The PHA must comply with HUD's LEP Final Rule in providing language services throughout the grievance process.

#### **14-III.1. DECISION OF THE HEARING OFFICER [24 CFR 966.57]**

The hearing officer must issue a written decision, stating the reasons for the decision, within a reasonable time after the hearing. Factual determinations relating to the individual circumstances of the family must be based on a preponderance of evidence presented at the hearing. A copy of the decision must be sent to the complainant and the PHA. The PHA must retain a copy of the decision in the tenant's folder. A log of all hearing officer decisions must also be maintained by the PHA and made available for inspection by a prospective complainant, their representative, or the hearing officer [24 CFR 966.57(a)].

##### PHA Policy

In rendering a decision, the hearing officer will consider the following matters:

**PHA Notice to the Family:** The hearing officer will determine if the reasons for the PHA's decision are factually stated in the notice.

**Discovery:** The hearing officer will determine if the family was given the opportunity to examine any relevant documents in accordance with PHA policy.

**PHA Evidence to Support the PHA Decision:** The evidence consists of the facts presented. Evidence is not conclusion and it is not argument. The hearing officer will evaluate the facts to determine if they support the PHA's conclusion.

**Validity of Grounds for Termination of Tenancy (when applicable):** The hearing officer will determine if the termination of tenancy is for one of the grounds specified in the HUD regulations and PHA policies. If the grounds for termination are not specified in the regulations or in compliance with PHA policies, then the decision of the PHA will be overturned.

The hearing officer will issue a written decision to the family and the PHA no later than 10 business days after the hearing. The report will contain the following information:

##### Hearing Information:

Name of the complainant

Date, time and place of the hearing

Name of the hearing officer

Name of the PHA representatives

Name of family representative (if any)

Names of witnesses (if any)

**Background:** A brief, impartial statement of the reason for the hearing and the date(s) on which the informal settlement was held, who held it, and a summary of the results of the informal settlement. It will also include the date the complainant requested the grievance hearing.

**Summary of the Evidence:** The hearing officer will summarize the testimony of each witness and identify any documents that a witness produced in support of their testimony and that are admitted into evidence.

**Findings of Fact:** The hearing officer will include all findings of fact, based on a preponderance of the evidence. *Preponderance of the evidence* is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

**Conclusions:** The hearing officer will render a conclusion derived from the facts that were found to be true by a preponderance of the evidence. The conclusion will result in a determination of whether these facts uphold the PHA's decision. **Order:** The hearing decision will include a statement of whether the PHA's decision is upheld, overturned, or remanded (the hearing decision may remand the case back to the PHA for further action, for example, consideration of a reasonable accommodation). If the PHA's adverse decision is overturned, the hearing decision will instruct the PHA to change the decision in accordance with the hearing officer's determination. If the PHA's decision to terminate is overturned, the hearing decision will instruct the PHA to restore the family's status.

## **Procedures for Further Hearing**

### **PHA Policy**

The hearing officer may ask the family for additional information and/or might adjourn the hearing in order to reconvene at a later date, before reaching a decision. If the family misses an appointment or deadline ordered by the hearing officer, the hearing officer's decision will be based on testimony and evidence presented. Another hearing will not be granted.

#### **Final Decision [24 CFR 966.57(b)]**

The decision of the hearing officer is binding on the PHA which must take the action, or refrain from taking the action cited in the decision unless the PHA Board of Commissioners determines within a reasonable time, and notifies the complainant that:

- The grievance does not concern PHA action or failure to act in accordance with or involving the complainant's lease on PHA policies which adversely affect the complainant's rights, duties, welfare, or status; or
- The decision of the hearing officer is contrary to federal, state, or local law, HUD regulations or requirements of the annual contributions contract between HUD and the PHA

#### **PHA Policy**

When the PHA considers the decision of the hearing officer to be invalid due to the reasons stated above, it will present the matter to the PHA Board of Commissioners within 10 business days of the date of the hearing officer's decision. The Board has 30 calendar days to consider the decision. If the Board decides to reverse the hearing officer's decision, it must notify the complainant within 10 business days of this decision.

A decision by the hearing officer or Board of Commissioners in favor of the PHA or which denies the relief requested by the complainant in whole or in part must not constitute a waiver of any rights, nor effect in any manner whatever, any rights the complainant may have to a subsequent trial or judicial review in court [24 CFR 966.57(c)].

## EXHIBIT 14-1: GRIEVANCE PROCEDURE

### I. Introduction

Public housing tenants have the right to request a grievance hearing for any PHA action or failure to act in accordance with the tenant's lease.

Grievance procedures do not apply in the following circumstances:

- A. Disputes between tenants not involving the PHA or class grievances [24 CFR 966.51(b)].
- B. The grievance procedure is not intended as a forum for initiating or negotiating policy changes between a group or groups of tenants and the PHA's Board of Commissioners [24 CFR 966.51(b)].
- C. When the PHA is in a HUD-declared due process state, HUD allows the PHA to exclude from the PHA grievance procedure any grievance concerning a termination of tenancy or eviction that involves:
  - i. Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises of other residents or employees of the PHA;
  - ii. Any violent or drug-related criminal activity on or off such premises; or
  - iii. Any criminal activity that resulted in felony conviction of a household member [24 CFR 966.51(a)(2)].

### II. Definitions [24 CFR 966.53]

- A. **Grievance:** Any dispute a tenant may have with respect to PHA action or failure to act in accordance with the individual tenant's lease or PHA regulations that adversely affects the individual tenant's rights, duties, welfare, or status.
- B. **Complainant:** Any tenant (as defined below) whose grievance is presented to the PHA or at the project management office in accordance with the requirements presented in this procedure.
- C. **Elements of due process:** An eviction action or a termination of tenancy in a state or local court in which the following procedural safeguards are required:
  - i. Adequate notice to the tenant of the grounds for terminating the tenancy and for eviction
  - ii. Right of the tenant to be represented by counsel
  - iii. Opportunity for the tenant to refute the evidence presented by the PHA, including the right to confront and cross-examine witnesses and to present any affirmative legal or equitable defense that the tenant may have
  - iv. A decision on the merits of the case

D. **Hearing officer:** An impartial person or persons selected by the PHA other than the person who made or approved the decision under review, or a subordinate of that person. Such individuals do not need legal training.

E. **Tenant:** The adult person (or persons other than a live-in aide) who resides in the unit and who executed the lease with the PHA as lessee of the dwelling unit, or if no such person now resides in the unit, the person who resides in the unit and is the remaining head of the household of the tenant family residing in the dwelling unit.

F. **Resident organization:** An organization of residents, which also may include a resident management corporation.

### III. **This grievance procedure [24 CFR 966.51]**

This grievance procedure is included by reference in all tenant dwelling leases and will be furnished to each tenant and all resident organizations [24 CFR 966.52 (b) and (d)].

Any changes proposed in this grievance procedure must provide for at least 30 days' notice to tenants and resident organizations, explaining the proposed changes and providing an opportunity to present written comments. Comments will be considered by the PHA before any revisions are made to the grievance procedure [24 CFR 966.52(c)].

### IV. **Informal settlement of a grievance [24 CFR 966.54]**

Any grievance request must be personally presented, either orally or in writing (including email), to the PHA's central office or the management office of the development in which the tenant resides within 10 days after the violation.

As soon as the grievance request is received, it will be reviewed by the PHA to ensure it meets the requirements for a grievance hearing. If the tenant is not entitled to a grievance, the PHA will notify the tenant that they may instead seek judicial review and the procedures for requesting such a review [24 CFR 966.4(1)(3)(i)(C)(v)(B)].

Otherwise, within 10 business days, the tenant will be contacted to arrange a mutually convenient time to meet so the grievance may be discussed and settled without a hearing. At the informal settlement, the tenant will present their grievance.

Within five business days following the informal settlement, the PHA will prepare and either hand deliver, mail, or email to the tenant a summary of the discussion. The summary will specify the names of the participants; the date of the meeting; the nature of the proposed resolution of the complaint, with specific reason(s); and will specify the procedures by which a formal hearing under this procedure may be obtained if the tenant is not satisfied [24 CFR 966.54]. A copy of this summary will also be placed in the tenant's file.

### V. **Requesting a formal grievance hearing**

If the tenant is not satisfied with the outcome of the informal settlement, the tenant must submit a written request for a hearing to the management office of the development

where the tenant lives no later than five business days after receiving the summary of the informal settlement.

The written request must specify the reasons for the request and the action or relief sought from the PHA.

## **VI. Selecting the hearing officer**

A grievance hearing will be conducted by an impartial person appointed by the PHA as described below:

- A. The hearing officer will be appointed directly by the executive director.
- B. The hearing officer will be someone who did not make or approve the decision under review and who is not a subordinate of such persons [24 CFR 066.54(e)].
- C. The PHA's method for selecting a hearing officer will be included in the lease [24 CFR 966.54(e)].

## **VII. Scheduling hearings [24 CFR 966.56(a)]**

When a tenant submits a timely request for a grievance hearing, the PHA will immediately appoint an impartial hearing officer.

Once the hearing has been scheduled, the tenant will receive written notice of the hearing, sent by mail or email, return receipt requested.

Within 10 days of receiving the written request, the hearing will be scheduled. The tenant, PHA, and hearing officer will be notified in writing of the date, time and location of the hearing. If the hearing will be held remotely, the PHA will also include information on the remote hearing process.

The tenant may request to reschedule a hearing once. Should the tenant need to reschedule a second time, they may only do so for good cause, or if needed as a reasonable accommodation for a person with disabilities. *Good cause* is defined as an unavoidable conflict which seriously affects the health, safety, or welfare of the family. Requests to reschedule a hearing must be made orally or in writing at least one day prior to the hearing date.

## **VIII. Procedures governing the hearing [24 CFR 966.56]**

The hearing will be held before a hearing officer as described above in Section VI. The tenant will be afforded a fair hearing, which will include:

- A. The opportunity to examine any PHA documents before the hearing, including records and regulations, that are directly relevant to the hearing.

The tenant must request to view and copy PHA documents relevant to the hearing by noon of the day before the hearing. The tenant is allowed to copy any such document at no cost to the tenant.

If the PHA does not make the document available for examination upon request by the tenant, the PHA may not rely on such document at the grievance hearing.

B. The right to be represented by counsel or any other person chosen as the tenant's representative, at the tenant's expense, and to have such person make statements on the tenant's behalf.

C. The right to a private hearing unless the tenant requests a public hearing.

D. The right to present evidence and arguments in support of the tenant's complaint, to refute evidence relied on by the PHA or project management, and to confront and cross-examine all witnesses upon whose testimony or information the PHA or project management relies.

E. A decision based solely and exclusively upon the facts presented at the hearing [24 CFR 966.56(b)].

The hearing is conducted informally by the hearing officer. The PHA and the tenant must be given the opportunity to present oral or documentary evidence that is relevant to the facts and issues raised, and to question any witnesses.

The hearing decision will be based on the preponderance of the evidence, defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

The tenant or the PHA may arrange in advance for a transcript or recording of the hearing at the expense of the party making the arrangement.

The PHA must provide reasonable accommodation for persons with disabilities to participate in the hearing. Reasonable accommodation may include qualified sign language interpreters, readers, accessible locations, or attendants. If the tenant is visually impaired, any notice to the tenant that is required under this procedure must be in an accessible format [24 CFR 966.56(f)].

The PHA must comply with HUD's requirements regarding limited English proficiency (LEP). The tenant has the right to request competent oral interpretation, free of charge. LEP requirements can be found at:

[https://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp/promotingh/lep-faq](https://www.hud.gov/program_offices/fair_housing_equal_opp/promotingh/lep-faq)

## **IX. Remote Hearings**

The PHA has the authority to require that hearings be conducted remotely in certain situations.

## **X. Failure to appear at the hearing**

If the tenant does not arrive within 30 minutes of the scheduled time, it will be considered a failure to appear, which means they have given up their right to a hearing.

Both the tenant and the PHA must be notified of the determination by the hearing officer. A determination that the tenant has waived their right to a hearing will not constitute a waiver of any right the tenant may have to contest the PHA's disposition of the grievance in an appropriate judicial setting [24 CFR 966.56(c)].



## **XI.**

### **Decision of the hearing officer [24 CFR 966.57]**

The hearing officer will prepare a written decision together with the reasons for the decision within 10 business days after the hearing. A copy of the decision will be sent to the tenant and the PHA.

The PHA will retain a copy of the decision in the tenant's file.

The hearing officer may ask the family for additional information and/or might adjourn the hearing in order to reconvene at a later date before reaching a decision. If the family misses a deadline ordered by the hearing officer, the hearing officer will make a decision based on the evidence presented.

The decision of the hearing officer will be binding on the PHA unless the PHA's Board of Commissioners determines within a reasonable time and notifies the tenant of its determination that:

- A. The grievance does not concern PHA action or failure to act in accordance with or involving the tenant's lease or PHA regulations, which adversely affect the tenant's rights, duties, welfare, or status; or
- B. The decision of the hearing officer is contrary to applicable federal, state, or local law, HUD regulations, or requirements of the annual contributions contract (ACC) between HUD and the PHA.

When the PHA considers the decision of the hearing officer to be invalid for either of the reasons stated above, it will present the matter to the PHA Board of Commissioners within 10 business days of the date of the hearing officer's decision. The Board will have 30 calendar days to consider the decision. If the Board decides to reverse the hearing officer's decision, it must notify the tenant within 10 business days of this decision.

A decision by the hearing officer or Board of Commissioners in favor of the PHA or which denies the relief requested by the tenant, in whole or in part, will not constitute a waiver of nor affect in any way the tenant's right to a trial or judicial review in any court proceedings, which may be brought in the matter later [24 CFR 966.57].

## Chapter 15

### PROGRAM INTEGRITY

#### INTRODUCTION

The PHA is committed to ensuring that funds made available to the PHA are spent in accordance with HUD requirements.

This chapter covers HUD and PHA policies designed to prevent, detect, investigate and resolve instances of program abuse or fraud. It also describes the actions that will be taken in the case of unintentional errors and omissions.

Part I: Preventing, Detecting, and Investigating Errors and Program Abuse. This part presents PHA policies related to preventing, detecting, and investigating errors and program abuse.

Part II: Corrective Measures and Penalties. This part describes the corrective measures the PHA must and may take when errors or program abuses are found.



## PART I: PREVENTING, DETECTING, AND INVESTIGATING ERRORS AND PROGRAM ABUSE

### 15-1.A. PREVENTING ERRORS AND PROGRAM ABUSE

HUD created the Enterprise Income Verification (EIV) system to provide PHAs with a powerful tool for preventing errors and program abuse. PHAs are required to use the EIV system at annual reexamination in accordance with HUD administrative guidance [24 CFR 5.233]. PHAs are further required to:

- Provide applicants and residents with form HUD-52675, "Debts Owed to PHAs and Terminations."
- Require all adult members of an applicant or participant family to acknowledge receipt of form HUD-52675 by signing a copy of the form for retention in the family file

#### PHA Policy

The PHA anticipates that the vast majority of families and PHA employees intend to and will comply with program requirements and make reasonable efforts to avoid errors.

To ensure that the PHA's program is administered effectively and according to the highest ethical and legal standards, the PHA will employ a variety of techniques to ensure that both errors and intentional program abuse are rare.

The PHA will provide each applicant and resident with a copy of "Is Fraud Worth It?" (form HUD-1141-OIG), which explains the types of actions a family must avoid and the penalties for program abuse.

The PHA will provide each applicant and resident with a copy of "What You Should Know about EIV," a guide to the Enterprise Income Verification (EIV) system published by HUD as an attachment to Notice PIH 2017-12. In addition, the PHA will require the head of each household to acknowledge receipt of the guide by signing a copy for retention in the family file.

The PHA will require mandatory orientation sessions for all prospective residents either prior to or upon execution of the lease. The PHA will discuss program compliance and integrity issues. At the conclusion of all program orientation sessions, the family representative will be required to sign a program briefing certificate to confirm that all rules and pertinent regulations were explained to them.

The PHA will routinely provide resident counseling as part of every reexamination interview in order to clarify any confusion pertaining to program rules and requirements.

PHA staff will be required to review and explain the contents of all HUD- and PHA-required forms prior to requesting family member signatures.

The PHA will place a warning statement about the penalties for fraud (as described in 18 U.S.C. 1001 and 1010) on key PHA forms and form letters that request information from a family member.

The PHA will provide each PHA employee with the necessary training on program rules and the organization's standards of conduct and ethics.

At every regular reexamination the PHA staff will explain any changes in HUD regulations or PHA policy that affect residents.

For purposes of this chapter the term *error* refers to an unintentional error or omission.

*Program abuse or fraud* refers to a single act or pattern of actions that constitute a false statement, omission, or concealment of a substantial fact, made with the intent to deceive or mislead.

## **15-1.B. DETECTING ERRORS AND PROGRAM ABUSE**

In addition to taking steps to prevent errors and program abuse, the PHA will use a variety of activities to detect errors and program abuse.

### **Quality Control and Analysis of Data**

#### **PHA Policy**

The PHA will employ a variety of methods to detect errors and program abuse, including:

The PHA routinely will use EIV and other non-HUD sources of up-front income verification. This includes the Work Number and any other private or public databases available to the PHA.

At each annual reexamination, current information provided by the family will be compared to information provided at the last annual reexamination to identify inconsistencies and incomplete information.

The PHA will compare family-reported income and expenditures to detect possible unreported income.

### **Independent Audits and HUD Monitoring**

Notice PIH 2015-16 requires all PHAs that expend \$750,000 or more in federal awards annually to have an independent audit (IPA). In addition, HUD conducts periodic on-site and automated monitoring of PHA activities and notifies the PHA of errors and potential cases of program abuse.

#### **PHA Policy**

The PHA will use the results reported in any IPA or HUD monitoring reports to identify potential program abuses as well as to assess the effectiveness of the PHA's error detection and abuse prevention efforts.

### **Individual Reporting of Possible Errors and Program Abuse**

#### **PHA Policy**

The PHA will encourage staff, residents, and the public to report possible program abuse.

## 15-I.C. INVESTIGATING ERRORS AND PROGRAM ABUSE

### When the PHA Will Investigate

#### PHA Policy

The PHA will review all referrals, specific allegations, complaints, and tips from any source including other agencies, companies, and individuals, to determine if they warrant investigation. In order for the PHA to investigate, the allegation must contain at least one independently-verifiable item of information, such as the name of an employer or the name of an unauthorized household member.

The PHA will investigate when inconsistent or contradictory information is detected through file reviews and the verification process.

#### **Consent to Release of Information [24 CFR 960.259]**

The PHA may investigate possible instances of error or abuse using all available PHA and public records. If necessary, the PHA will require families to sign consent forms for the release of additional information.

#### **Analysis and Findings**

##### PHA Policy

The PHA will base its evaluation on a preponderance of the evidence collected during its investigation.

*Preponderance of the evidence* is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence that as a whole shows that the fact sought to be proved is more probable than not. Preponderance of evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

For each investigation the PHA will determine (1) whether an error or program abuse has occurred, (2) whether any amount of money is owed the PHA, and (3) what corrective measures or penalties will be assessed.